

No. 17041

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United States  
Court of Appeals  
for the Ninth Circuit

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NATIONAL LABOR RELATIONS BOARD,  
Petitioner,

vs.

MIKE TRAMA,  
Respondent.

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Transcript of Record

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FILED

DEC 19 1960

Petition for Enforcement of an Order of the  
National Labor Relations Board

FRANK H. SCHMID, CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

### Appearances:

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Los Angeles, California,  
appearing as Counsel for  
General Counsel.

HOWARD E. MILLER, ESQ.,  
821 South Pacific Avenue,  
San Pedro, California,  
appearing on behalf of Mike Trama.

BEN MARGOLIS, ESQ.,  
c/o MARGOLIS, McTERNAN and  
BRANTON,  
112 West 9th Street,  
Los Angeles 15, California,  
appearing on behalf of Fishermen's  
Union, Local 33, ILWU, Charging  
Parties.





## GENERAL COUNSEL'S EXHIBIT 1-C

United States of America  
Before the National Labor Relations Board  
Twenty-First Region  
Case No. 21-CA-2904

MIKE TRAMA (F/V SANDY BOY)  
and  
FISHERMEN'S UNION, LOCAL 33, ILWU

## COMPLAINT AND NOTICE OF HEARING

It having been charged by Fishermen's Union, Local 33, ILWU, herein called Local 33, that Mike Trama (F/V Sandy Boy), herein called Respondent, has engaged in, and is engaging in, unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Regional Director, issues this Complaint and Notice of Hearing, pursuant to Section 10 (b) of the Act, and Section 102.15 of the Board's Rules and Regulations, Series 7, as amended.

1. The charge was filed by Local 33 on January 13, 1958, and was served on Respondent by registered mail on January 13, 1958.

2. Respondent, at all times material herein, is and has been engaged in the business of deep sea fishing. Respondent maintains business and office addresses at c/o Howard E. Miller, 821 South Pacific Avenue, San Pedro, California, and 1015 Harbor View, San Pedro, California.

3. Respondent, during the calendar year 1958, sold and delivered to Franco-Italian Packing Co., herein called Franco-Italian, fresh fish valued in excess of \$50,000.

4. Franco-Italian is engaged, at San Pedro, California, in the business of processing, canning and distributing sardines and other fish.

5. During the calendar year 1958, Franco-Italian shipped canned fish valued in excess of \$50,000 directly to points outside the State of California.

6. Respondent is, and at all times material hereto has been, engaged in commerce within the meaning of Section 2, subsections (6) and (7) of the Act.

7. Fishermen's Union, Local 33, ILWU, is a labor organization within the meaning of Section 2, subsection (5) of the Act.

8. Seine and Line Fishermen's Union of San Pedro, Seafarers International Union of North America, AFL-CIO, herein called Seine and Line, is a labor organization within the meaning of Section 2, subsection (5) of the Act.

9. Respondent has interfered with, restrained and coerced, and is interfering with, restraining and coercing, its employees in the exercise of rights guaranteed them in Section 7 of the Act, by Mike Trama:

(a) Telling employees during the period beginning on or about September 1, 1957, and ending on or about September 27, 1957, that if they wished to fish with and for him they would have to join Local 33;

(b) Telling employees during the period beginning on or about October 1, 1957, and ending on or about December 31, 1957, that they could not fish with and for him unless they joined Seine and Line;

(c) Telling employees during the period beginning on or about October 1, 1957, and ending on or about December 31, 1957, that they could not fish with and for him unless they dropped their lawsuit against Respondent, Seine and Line, and others;

(d) Telling employees during the period beginning on or about October 1, 1957, and ending on or about December 31, 1957, that if they didn't join Seine and Line, they would be discharged; and

(e) Telling employees during the period beginning on or about October 1, 1957, and ending on or about December 31, 1957, that if they didn't drop their lawsuit against Respondent, Seine and Line, and others, they would be discharged.

10. On or about January 2, 1958, Respondent discharged the following employees and thereafter failed and refused, and does now fail and refuse to reinstate them to their former, or substantially equivalent positions of employment:

- |                 |               |
|-----------------|---------------|
| Antoine Affidi  | Sal Lucca     |
| Vincenzo Bulone | Rosario Rizza |
| Frank Ferrara   | Nick Mudry    |

11. The Respondent discharged the employees named in paragraph 10 above and thereafter failed and refused, and does now fail and refuse to reinstate them to their former, or substantially equivalent positions of employment because of their membership in Local 33, because they were not and did not become members of Seine and Line and because they engaged in concerted activities for the purposes of collective bargaining and other mutual aid or protection, including bringing a lawsuit for damages for loss of earnings against Respondent, Seine and Line, and others.

12. Respondent, by the acts set forth and described in paragraphs 10 and 11 above, discriminated against, and is discriminating against, the employees named in paragraph 10 above in regard to their hire and tenure of employment, in order to discourage membership in Local 33, encourage membership in Seine and Line and to discourage concerted activities protected by Section 7 of the Act, and thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the act.

13. Respondent, by the acts set forth and described in paragraphs 9, 10, 11 and 12 above, and by each of said acts, interfered with, restrained and coerced, and is interfering with, restraining and coercing, its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

14. The acts of Respondent, as set forth and described in paragraphs 9, 10, 11, 12 and 13 above, and occurring in connection with the operations of Respondent, as described in paragraphs 2, 3, 4, 5 and 6 above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states of the United States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

15. The acts of Respondent described above constitute unfair labor practices affecting commerce within the meaning of Section 8 (a), subsections (1) and (3), and Section 2, subsections (6) and (7) of the Act.

Please Take Notice that on the 13th day of April 1959, at 10:00 A.M., PST, in Hearing Room 2, Mezza-

nine Floor, 849 South Broadway, Los Angeles, California, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

You are further notified that pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, Series 7, as amended, Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to said Complaint within ten (10) days from the service thereof, and that unless it does so all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board.

Wherefore, on this 27th day of February 1959, the General Counsel of the National Labor Relations Board, on behalf of the Board, has caused the Regional Director of the Twenty-First Region to issue this Complaint and Notice of Hearing against Respondent herein.

/s/ RALPH E. KENNEDY,  
Regional Director  
National Labor Relations Board  
Twenty-First Region  
849 South Broadway  
Los Angeles 14, California

Admitted in Evidence April 13, 1959.

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## GENERAL COUNSEL'S EXHIBIT 1-G

[Title of Board and Cause.]

## ANSWER OF MIKE TRAMA TO COMPLAINT

Comes now Mike Trama and for answer to the Complaint of the National Labor Relations Board admits, denies and alleges as follows, to-wit:

## I.

Answering Paragraph 2, Mike Trama denies he maintains a business and office address c/o Howard E. Miller, 821 South Pacific Avenue, San Pedro, California.

## II.

Answering Paragraph 5, Mike Trama alleges he does not have sufficient information or belief to enable him to answer the allegations contained in said paragraph and basing his denial upon such lack of information and belief denies generally and specifically, jointly and severally, each, all and every allegation contained therein, and the whole thereof.

## III.

Answering Paragraph 6, Mike Trama alleges he does not have sufficient information or belief to enable him to answer the allegations contained in said paragraph and basing his denial upon such lack of information and belief denies generally and specifically, jointly and severally, each, all and every allegation contained therein, and the whole thereof; further answering the allegations of said paragraph, upon information and belief Mike Trama alleges that prior to January 1st, 1958 he was not engaged in commerce within the meaning of Section 2, subsections 6 and 7 of the Act.

## IV.

Answering Paragraphs 7 and 8, Mike Trama alleges he does not have sufficient information or belief to enable him to answer the allegations contained in said paragraph and basing his denial upon such lack of information and belief denies generally and specifically, jointly and severally, each, all and every allegation contained therein, and the whole thereof.

## V.

Answering Paragraph 9, Mike Trama denies generally and specifically, jointly and severally, each, all and every allegation contained therein and the whole thereof; further answering the allegations contained within said paragraph, Mike Trama specifically denies as follows:

- a. That during a period beginning on or about September 1st, 1957 and ending on or about September 27th, 1957, or at any time whatsoever inclusive of said dates or any other dates, did he tell employees or any other persons whomsoever that if they wished to fish with or for him they would have to join Local 33 or any other organization.
- b. That during a period beginning on or about October 1st, 1957 and ending on or about December 31, 1957, or at any other time inclusive of said dates or any other dates, did he tell employees or any other persons whomsoever that they could not fish with or for him unless they joined Seine and Line Fishermen's Union of San Pedro or any other organization.
- c. That during a period beginning on or about October 1st, 1957 and ending on or about December

31st, 1957, or at any other time inclusive of said dates or any other dates, did he tell employees or any other persons whomsoever that they could not fish with or for him unless they dropped their lawsuit against Seine and Line Fishermen's Union or any other organization.

- d. That during a period beginning on or about October 1st, 1957 and ending on or about December 31st, 1957, or at any other time inclusive of said dates or any other dates, did he tell employees or any other persons whomsoever that they would be discharged if they did not join Seine and Line, or any other organization.
- e. That during a period beginning on or about October 1st, 1957 and ending on or about December 31st, 1957, or at any other time inclusive of said dates or any other dates, did he tell employees or any other persons whomsoever that they would be discharged if they did not drop their lawsuit against Seine and Line, or any other organization.

## VI.

Answering Paragraph 10, Mike Trama denies generally and specifically, jointly and severally, each, all and every allegation contained therein, and the whole thereof; further answering the allegations of said paragraph, Mike Trama denies on or about January 2nd, 1958 he discharged the employees listed in said paragraph and, to the contrary, alleges Nick Mudry and Antoine Affidi voluntarily terminated their employment with Mike Trama some time previous to December 31st, 1957; further answering the allegations of said paragraph, Mike



Trama alleges all employees named in said Paragraph 10 were hired for the sardine fishing season which terminated December 31st, 1957 and that said employment by its own terms terminated at said time.

#### VII.

Answering Paragraph 11, Mike Trama denies generally and specifically, jointly and severally, each, all and every allegation contained therein, and the whole thereof; further answering the allegations of said paragraph Mike Trama denies his refusal to rehire any of the persons named in Paragraph 10 of the Complaint was because of their membership in Local 33, or any other organization, or was because they were not or would not become members of Seine and Line, or any other organization, or was because they engaged in concerted activities for the purpose of collective bargaining and mutual aid or production, including bringing a law suit for damage for loss of earnings against Mike Trama and, to the contrary, alleges upon termination of their term of hire Mike Trama exercised his rights and privileges to refuse to hire the parties named in Paragraph 10 of the Complaint for personal reasons which he believed to be for the betterment of peace and harmony in working conditions aboard the fishing vessel Sandy Boy.

#### VIII.

Answering Paragraphs 12, 13, 14 and 15, Mike Trama denies generally and specifically, jointly and severally, each, all and every allegation contained therein and the whole thereof.

For an Affirmative, Separate and Distinct Defense  
of the Complaint

I.

That the alleged acts complained of in the Complaint occurred prior to the time when complainant alleges the National Labor Relations Board to have entertained jurisdiction of the parties named herein.

Wherefore, Mike Trame prays for a ruling he has never engaged in unfair labor practices and this Complaint be hence dismissed.

/s/ HOWARD E. MILLER,  
Attorney for Mike Trama

Duly Verified.

Admitted in Evidence April 13, 1959.

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[Title of Board and Cause.]

INTERMEDIATE REPORT AND RECOMMENDED ORDER

Statement of the Case

Upon a charge filed by Fishermen's Union, Local 33, ILWU, herein called Local 33, the General Counsel of the National Labor Relations Board issued his complaint alleging that Mike Trama, herein sometimes the Respondent, has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 61 Stat. 136, herein called the Act.

It is alleged that Mike Trama on one occasion told his employees that their employment depended upon becoming members of Local 33, and on other and subsequent occasions, told them that they could not work unless they joined Seine and Line Fishermen's Union of San Pedro, herein called Seine and Line. It is finally alleged that Trama discharged his six employees because of their refusal to join Seine and Line.

Respondent's answer traverses many of the factual allegations in the complaint, questions the jurisdiction of the Board in the premises, and denies the commission of unfair labor practices.

Pursuant to notice a hearing was held before the undersigned Trial Examiner in Los Angeles, California, on April 13 and 15, 1959. All parties were represented by counsel and participated in the hearing. Briefs have been received from counsel for the Respondent and counsel for the General Counsel.

Upon the entire record in the case and from my observation of the witnesses I make the following:

### Findings of Fact

#### I. The business of the Respondent

The complaint bases assertion of jurisdiction upon the Respondent's business operations in the calendar year 1958. Certain of the unfair labor practices, however, are alleged to have occurred in the closing months of 1957. It is argued that the operations of the Respondent in 1957 did not meet the Board's then effective jurisdictional standards, or, for that matter, did not meet the standards as they have since been changed. The business of the Respondent is deep-sea fishing. From a date

in late September 1957 until the end of that year the Respondent delivered fish having a value in excess of \$10,000 to Franco-Italian Packing Co., herein called Franco-Italian. During the calendar year 1958 deliveries to Franco-Italian exceeded \$78,000 in value. Franco-Italian is engaged at San Pedro, California, in the business of processing, canning and distributing sardines and other fish and in 1958, shipped products valued in excess of \$50,000 directly to points outside of the State of California. As will more particularly appear, a labor dispute current in the latter months of 1957 curtailed Respondent's fishing operations to such an extent that the period is not a representative one. As Respondent's operations during the year 1958 satisfy the jurisdictional requirements of the Board, I find that jurisdiction exists and that the purposes of the Act will be effectuated by its assertion.<sup>1</sup>

## II. The organizations involved

Local 33 and Seine and Line are labor organizations within the meaning of Section 2 (5) of the Act, admitting to membership employees of the Respondent.

## III. The unfair labor practices

For several years until sometime in the summer of 1957 Trama was the owner and master of the Fisher-

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<sup>1</sup>Abstention is indicated, it is argued, because in the fall of 1957 the Respondent, when seeking the aid of the Board in respect to a secondary boycott being pursued by Seine and Line, was informed that he did not meet jurisdictional standards. The argument might be appealing were we now being asked to remedy an unfair labor practice occurring at that time and running between Seine and Line and the Respondent. That is not this case. The Respondent's inability to obtain relief from the Board in respect to Seine and Line does not license it to commit unfair labor practices affecting the individuals named in this complaint. *Siemons Mailing Service*, 122 NLRB No. 13.

man, a deep-sea fishing vessel. In June of that year and at various times before that month his crew consisted of Antoine Affidi, Vincenzo Bulone, Sal Lucca, Rosario Rizza and Frank Ferrara. The Respondent, in operating the Fisherman, had an agreement with Seine and Line, and the crew were members or permit-holders of the organization. In the summer of 1957, another vessel, the Sandy Boy, was being constructed for the Respondent. The crew of the Fisherman aided in the fitting out of the Sandy Boy without compensation but with the understanding that they would fish from the Sandy Boy after its launching. Also in June the Respondent hired Nicholas Mudry, a machinist, to handle the installation of equipment in the Sandy Boy. Mudry worked full time on this task throughout the summer of 1957 until the vessel was ready to go fishing. It was understood between Mudry and the Respondent that when the vessel began fishing he would go along as engineer. For the time that he spent in installation work he was paid \$100 a week.

The sardine season off the California coast opened on September 1. Because no agreement had been reached with the canneries on the price to be paid for fish none of the fishing vessels in the San Pedro harbor were working. The Sandy Boy was ready to go out in late September, and before that time came the Respondent managed to reach an agreement with Franco-Italian to take his catch at \$80 a ton. Other canneries were offering \$55. The Respondent, eager to try fishing at the \$80 price, spoke to John Calise, a business agent for Seine and Line in an attempt to reach agreement with Calise covering the crew of the Sandy Boy so that fishing could get under way. Calise said that the contract covering

the Fisherman was applicable to the Sandy Boy but refused to give his approval to any fishing at that time by the Respondent. Trama then went to Local 33 to see what he could work out with that organization. He was told by John Royal, an official of Local 33, that if his crew desired to be represented by Local 33 a contract permitting fishing could be arranged. Mudry who accompanied the Respondent on this visit testified that the Respondent told him to get the crew to join Local 33. Thereafter, according to Mudry, he and the Respondent told the crew that they could go fishing if they joined Local 33. Mudry, Bulone and Ferrara signed dues-deduction authorizations for Local 33, whereupon that Local and the Respondent entered into a contract covering the crew of the Sandy Boy. On the evening of September 27 the Sandy Boy went fishing and returned the next day with its catch to Franco-Italian.

There an indication of the troubles that were to beset the Respondent and his crew awaited them. A picket line was established at the discharge point by Seine and Line, and for a number of hours loading was delayed. Finally the catch was accepted and the vessel delivered fish to Franco-Italian for the next several days. About October 17, a representative of Franco-Italian told Trama that his catch could not be accepted because the workers in the cannery, members of a labor organization affiliated with the parent body of Seine and Line, would not handle it. In the following week Trama talked with officials of Seine and Line to learn why he was being stopped from fishing. Calise said that first the Respondent would have to sign a contract with Seine and Line and his crew members would have to pay substantial fines and penalties in order to be reinstated as Seine and Line

members. The Respondent informed his crew that it appeared possible to continue fishing only if they became Seine and Line members and paid the penalties demanded. The crew refused to accept this arrangement. Trama told Calise of the decision of the crew members. Calise answered that Trama should force the crew to agree or get a crew that would. Trama then sought the aid of Local 33. He was advised that he could, with promise of success, bring an action in Federal Court against Seine and Line for damages arising out of the boycott situation. He refused to take this action. On October 28 the crew members brought suit in a State court against Franco-Italian, Seine and Line, the Respondent, and others, for loss of earnings.

After this suit was filed the Respondent again met with Calise in an effort to gain permission for the Sandy Boy to fish. Calise again stated the conditions he had imposed earlier and added that the lawsuit must be withdrawn.

Literally and figuratively the Respondent and his crew were in the same boat. No matter what success they might have in catching fish this could not be translated into earnings until the catch was sold. Seine and Line appears effectively to have prevented such sales. Certainly the Respondent violated no aspect of the Act in telling the crew members of the demands made by Calise and in listening to their reactions to the proposals of Seine and Line, but finally Respondent decided that the only way he would be permitted to use his vessel and to employ his crew was by capitulating to the terms of Seine and Line. In November he told the crew that unless they obtained reinstatement with Seine and Line and dropped their lawsuit he would discharge them. The vessel remained idle in November and for most of

December while the Respondent obtained employment on the vessel of a relative. For a few days in December a temporary injunction secured by one of the canneries permitted the Sandy Boy to fish. When this opportunity came Affidi was off on a trip to Algiers and Mudry had found other employment. On December 31 the Respondent notified each crew member that his employment was terminated.

In January 1958 Trama obtained a new crew and went fishing. From the beginning of its operations in 1958 the Respondent deducted from the earnings of each crew member those amounts paid by crews covered by contracts with Seine and Line. These deductions were different in amount from those made under the contract with Local 33. Several months later, assertedly at the request of the new crew members, Trama entered into a contract with Seine and Line covering the crew.

It is urged on the part of the Respondent that the crew members were employed for the sardine season ending December 31 and that they had no expectation of employment beyond that date. Those of the crew who testified, however, said in effect, that they were employed for no particular period with the anticipation that they would remain on the vessel as long as they cared to stay or until the Respondent decided to discharge them. Certainly it appears unlikely to me that the crew members would have worked without compensation for several months in the summer of 1957, preparing the Sandy Boy for fishing if belief existed that they would be permitted to work only for the sardine season. The Respondent admitted that his crew was competent enough but testified that he decided to replace them when they filed suit against him. The Respondent's argument,



runs in effect, that a fishing vessel is too small to house individuals whose dispute has ripened to the point of legal action.

The crew members recognized that their problem was not with the Respondent but with Seine and Line. The Respondent concluded that if he ever wanted to put his vessel to the use for which it was designed and to realize some return on his very substantial investment he must find a way to make peace with Seine and Line. At first he discussed the problem with the crew in what appears to have been an earnest effort to find a solution and sought advice and assistance from Local 33. When all seemed unavailing, the attempt to get relief through the National Labor Relations Board foundered on the reef of jurisdictional policy, he decided that he must give in to the Seine and Line and did so. From about November 9, 1957 through the end of the year he repeatedly told his crew that they could not work aboard the Sandy Boy unless they reached accommodation with Seine and Line. The Respondent's testimony that he lost confidence in his crew when they filed a suit in State court naming him as one of the defendants does not ring true. The question of bringing that action was discussed with him before filing and he was asked to join as a plaintiff. Only when he refused to do so was his name added as a defendant. In the circumstances existing he must have known that the suit did not reflect an attitude of animosity but rather an attempt to secure relief from a situation no less onerous to the Respondent than to the crew. I do not credit Respondent's testimony that he discharged his crew at the end of 1957 because he could no longer trust them. I find that the Respondent discharged his crew and each of them because he believed that only by such action would Seine and Line

permit him to deliver fish to the canneries. He then hired a new crew and began fishing in January.

There is no direct evidence that the Sandy Boy sailed in January 1958 under any sort of agreement with Seine and Line, or that the crew members hired to replace those discharged were then Seine and Line members. From the fact that the deductions from earnings were made in amounts required by Seine and Line contracts and from the further fact that the Sandy Boy in January and thereafter was able to market its catch without interference by Seine and Line, I infer that some sort of truce arrangement was reached.

I credit the testimony of Mudry and Affidi that the Respondent commanded the crew to get reinstated in Seine and Lne and to drop their lawsuit if they wished to continue fishing on the Sandy Boy. I also credit the un-denied testimony of Bulone that shortly after January 1, 1958 when Bulone asked the Respondent to rehire him the Respondent said that he could not do so because Seine and Line would cause him trouble.

In November 1957 and thereafter, the crew of the Sandy Boy was aware from what the Respondent had told them that they no longer would be employed aboard the vessel after the closing of the sardine season unless they became Seine and Line members. In this circumstance and in view of the fact that the Sandy Boy did not fish in the remainder of 1957 except for a few days in December when an injunction permitted it to do so, I find that Affidi did not abandon his employment by going to Algiers and that Mudry did not abandon his by taking another job. Neither of these men had reason to believe that they would be called upon again to fish on the Sandy Boy.

The Respondent is, of course, an employer. The selection of the crew is for him and their retention is at his pleasure. But in a very real sense both the master and the crew members are at the mercy of forces quite beyond the effective influence of either. In September 1957 the Respondent knew that he could sell sardines to Franco-Italian at a price he considered attractive. The question then obtrudes why did not he and his crew set about getting all the sardines they could and bringing them to that market. The answer is found in this record and it is obvious that both the Respondent and his crew believed that in order to do so they must first enter into some sort of contract arrangement either with Seine and Line or with Local 33. This belief was well founded and controlling. When Seine and Line refused to authorize fishing the Respondent asked Local 33 to do so. He was successful in circumstances already related. I do not consider this record to establish that in respect to Local 33 the Respondent did more than to tell the crew of the opportunity to fish and the willingness of Local 33 to give permission if the crew became members of that organization. No doubt he said that there could be no fishing otherwise and I think that he was reporting a fact which the crew well knew. I do not find this to be in the circumstances an interference with the right of the crew members to select their own bargaining representative. The respondent did no more I think than advise them of the opportunity. The economic thirst which moved the crew toward membership in Local 33 was not generated by him. I find no violation of the Act in the arrangement with Local 33 or in respect to what the Respondent told the crew in that connection. I view the early conversations between the Respondent and his crew later, in respect to Seine and Line in the same light.

Again an opportunity to fish seemed to exist and the Respondent at first did no more than advise his crew what action on their part would permit them to seize it.

But the conversations did not long remain on a level of debate. Despairing of persuading his crew of the facts of life as they seemed to operate in the San Pedro area the Respondent used his economic power as an employer first to threaten discharge if the crew members did not come within the fold of Seine and Line and finally to implement the threat when they failed to do so. I find that by threatening discharge to the crew members as found above the Respondent interfered with, restrained, and coerced them in the exercise of rights guaranteed in Section 7 of the Act and that the Respondent thereby violated Section 8 (a) (1) of the Act.

By discharging Affidi, Bulone, Rizza, Ferrara, Lucca, and Mudry on December 31, 1957, the Respondent discriminated in regard to their hire and tenure of employment thus encouraging membership in Seine and Line and discouraging membership in Local 33 and thereby violated Section 8 (a) (3) of the Act. By the discharges the Respondent interfered with, restrained and coerced his employees in respect to rights guaranteed in Section 7 of the Act and thereby violated Section 8 (a) (1) of the Act.

#### IV. The effect of the unfair labor practices upon commerce

The activities of the Respondent set forth in Section III, above, occurring in connection with its operations set forth in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

## V. The remedy

Having found that the Respondent has engaged in certain unfair labor practices it will be recommended that he cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent has threatened the crew of the *Sandy Boy* with discharge unless they joined Seine and Line, and having found that the Respondent on December 31, 1957 discharged Antoine Affidi, Vincenzo Bulone, Frank Ferrara, Sal Lucca, Rosario Rizza, and Nick Mudry, because they refused to join Seine and Line it will be recommended that the Respondent, in addition to ceasing and desisting from such conduct, offer to each of these named individuals immediate reinstatement, each to his former position aboard the *Sandy Boy*, discharging if necessary any replacements, and make each of them whole for any loss of earnings occasioned by the discrimination against them. The loss of earnings shall be computed in accordance with the formula stated in *F. W. Woolworth Co.*, 90 NLRB 289. It will also be recommended that the Respondent be ordered to make available to the Board or its agents upon request, all information concerning the fishing operations of the *Sandy Boy* from January 1, 1958 including information concerning sales and other dispositions of its catch in order to facilitate the computation of the amount of back pay due.

Upon the foregoing findings of fact and upon the entire record in the case I make the following:

## Conclusions of Law

1. Local 33 and Seine and Line are labor organizations within the meaning of Section 2 (5) of the Act.

2. The Respondent, Mike Trama, is an employer engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

3. By threatening to discharge the crew of the Sandy Boy unless they became members of Seine and Line the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

4. By discharging the six named crew members on December 31, 1957 the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

#### Recommendations

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case I recommend that Mike Trama, his agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening employees with loss of employment unless they join a particular labor organization.

(b) Discharging or otherwise discriminating in regard to the hire or the tenure of employment of any employee because he joins or fails to join any labor organization except in accord with the requirements of a collective bargaining agreement as authorized in Section 8 (a) (3) of the Act.

(c) In any other manner, interfering with, restraining, or coercing employees in the exercise of rights guaranteed in Section 7 of the Act except to the extent that

such right may be affected by an agreement requiring membership in a labor organization as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action:

(a) Offer to Antoine Affidi, Vincenzo Bulone, Frank Ferrara, Sal Lucca, Rosario Rizza and Nick Mudry, immediate and full reinstatement, each to his former job aboard the Sandy Boy without prejudice to seniority or other rights and privileges, discharging, if necessary, any replacements, and make each whole in the manner set forth in the section of this report entitled "The remedy."

(b) Preserve, and upon request, make available to the Board or its agents, for examination and copying all records of the Sandy Boy since January 1, 1958, indicating the extent of its fishing operations and the disposition of its catch and all other records necessary to an analysis of the amounts due under terms of this recommended order.

(c) Post aboard the Sandy Boy copies of the notice attached hereto marked "Appendix", copies of such notice to be furnished by the Regional Director for the Twenty-first Region. Such notice shall, after being duly signed by the Respondent, be posted by him immediately upon receipt thereof and be maintained by him for a period of sixty (60) consecutive days thereafter, in all places where notices to crew members are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by other material.

(d) Notify the Regional Director for the Twenty-first Region in writing within twenty (20) days from the date of receipt of this Intermediate Report and Recommended Order what steps he has taken in compliance.

It is further recommended that unless within twenty (20) days from the date of receipt of this Intermediate Report and Recommended Order, the Respondent notifies the said Regional Director in writing that he will comply with these recommendations, the Board issue an order requiring him to do so.

Dated this 28th day of May 1959.

/s/ WALLACE E. ROYSTER,  
Trial Examiner.

### Appendix

Notice to All Crew Members Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, you are hereby notified that:

I Will Not discourage membership in Fishermen's Union, Local 33, ILWU, or in any other labor organization by terminating any crew member or by discriminating in any other manner in regard to hire or tenure of employment, or any term or condition of employment.

I Will Not threaten any crew member with discharge for failure to join Seine and Line Fishermen's Union of San Pedro.

I Will Not in any other manner interfere with, restrain, or coerce crew members in the exercise of their rights to self-organization, to bargain collectively through representatives of their own choice, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities except to the extent that such rights may be affected by an agreement requiring mem-



bership in a labor organization as a condition of employment as authorized by Section 8 (a) (3) of the Act.

I Will Offer to Antoine Affidi, Vincenzo Bulone, Frank Ferrara, Sal Lucca, Rosario Rizza and Nick Mudry immediate and full reinstatement to the positions they held before the discrimination against them, discharging if necessary, any crew member hired since January 1, 1958, without prejudice to seniority or other rights and privileges, and I will make them whole for any loss of earnings suffered as a result of the discrimination against them.

All crew members are free to join, form or assist any labor organization, or to engage in self-organization, or other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such rights are affected by an agreement made in conformity with Section 8 (a) (3) of the Act.

Dated .....

MIKE TRAMA (F/V SANDY BOY),  
(Employer)

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This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

United States of America  
Before the National Labor Relations Board

Case No. 21-CA-2904

MIKE TRAMA (F/V SANDY BOY)

and

FISHERMEN'S UNION, LOCAL 33, ILWU

### DECISION AND ORDER

On May 28, 1959, Trial Examiner Wallace E. Royster issued his Intermediate Report in this case, finding that the Respondent had engaged in and was engaging in unfair labor practices in violation of Section 8 (a)(1) and (3) of the Act, and recommending that the Respondent cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner as modified herein.

1. The Respondent excepts to the Trial Examiner's finding that jurisdiction should be asserted in this case under the Board's 1958 jurisdictional standards, contending that consideration should be given to the fact that its

conduct alleged to be unlawful herein occurred in 1957, when his operations did not satisfy the jurisdictional standards then in effect, and that as late as March 21, 1958, the Board refused to assert jurisdiction over his business.<sup>1</sup> However, in adopting the 1958 jurisdictional standards, the Board stated that it would "apply the revised jurisdictional standards to all future and pending cases."<sup>2</sup> At the time this policy was announced, the present case was pending on appeal to the General Counsel from the action taken by the Regional Director on March 21, 1958, in refusing to issue a complaint because the Respondent's operations did not meet the Board's jurisdictional standards. This exception, therefore, lacks merit.<sup>3</sup>

2. We agree with the Trial Examiner that the complainants herein were discriminatorily terminated on December 31, 1957. However, in the exercise of our administrative discretion as to the remedy most appropriate in the circumstances, we find that it will best effectuate the policies of the Act if the provisions in our Order, that the Respondent make whole the discriminatorily discharged employees for any loss of earnings on their part, are limited to the period between the date of the dis-

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<sup>1</sup>As the Board may take official notice of its own records and proceedings, particularly those pertaining to employees of the same employer, we grant Respondent's motion that official notice be taken of the fact that on March 21, 1958, his petition in Case No. 21-RM-471 was dismissed by the Regional Director for lack of jurisdiction. See *Mount Hope Finishing Company*, 106 NLRB 480, 483.

<sup>2</sup>*Siemons Mailing Service*, 122 NLRB No. 13 (Member Jenkins concurring specially).

<sup>3</sup>*Wausau Building and Construction Trades Council (Heiser Ready Mix Company)*, 123 NLRB No. 172, on which the Respondent relies, is a clearly distinguishable case. In that case, the General Counsel revived a charge which he had properly dismissed under existing jurisdictional standards. In the present case, the General Counsel never affirmed the Regional Director's disposition of the charge.

crimination and March 21, 1958, when the Regional Director dismissed the Respondent's representation petition and refused to issue a complaint herein because of lack of jurisdiction, and to the period subsequent to February 27, 1959, when the complaint issued herein and the Respondent was informed that the Board was no longer adhering to the prior administrative determination with regard to jurisdiction over his operations.<sup>4</sup>

### Order

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent Mike Trama, his agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening employees with loss of employment unless they join a particular labor organization.

(b) Discharging or otherwise discriminating in regard to the hire or the tenure of employment of any employee because he joins or fails to join any labor organization except in accord with the requirements of a collective bargaining agreement as authorized in Section 8 (a)(3) of the Act.

(c) In any other manner, interfering with, restraining, or coercing employees in the exercise of rights guaranteed in Section 7 of the Act except to the extent that such right may be affected by an agreement requiring membership in a labor organization as authorized in Section 8 (a)(3) of the Act.

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<sup>4</sup>See *The Baltimore Transit Company*, 47 NLRB 109, 112-113, enf. 140 F. 2d 51 (C. A. 4).

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Offer to Antoine Affidi, Vincenzo Bulone, Frank Ferrara, Sal Lucca, Rosario Rizza and Nick Mudry, immediate and full reinstatement, each to his former job aboard the *Sandy Boy* without prejudice to seniority or other rights and privileges, discharging, if necessary, any replacements, and make each whole in the manner set forth in the Intermediate Report entitled "The remedy" for any loss they may have suffered between the date of the discrimination against them and March 21, 1958, and for the period subsequent to February 27, 1959.

(b) Preserve, and upon request, make available to the Board or its agents, for examination and copying all records of the *Sandy Boy* since January 1, 1958, indicating the extent of its fishing operations and the disposition of its catch and all other records necessary to an analysis of the amounts due under terms of this Order.

(c) Post aboard the *Sandy Boy* copies of the notice attached hereto marked "Appendix."<sup>5</sup> Copies of such notice, to be furnished by the Regional Director for the Twenty-first Region, shall, after being duly signed by the Respondent, be posted by him immediately upon receipt thereof and be maintained by him for a period of sixty (60) consecutive days thereafter, in all places where notices to crew members are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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<sup>5</sup>In the event that this Order is enforced by a decree of the United States Court of Appeals, this notice shall be amended by substituting for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

(d) Notify the Regional Director for the Twenty-first Region in writing within ten (10) days from the date of this Order what steps he has taken in compliance.

Dated, Washington, D. C. Nov. 17, 1959.

BOYD LEEDOM,  
Chairman

STEPHEN S. BEAN,  
Member

JOSEPH ALTON JENKINS,  
Member  
National Labor Relations Board

[Seal]

#### Appendix

Notice to All Crew Members Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, you are hereby notified that:

I Will Not discourage membership in Fishermen's Union, Local 33, ILWU, or in any other labor organization by terminating any crew member or by discriminating in any other manner in regard to hire or tenure of employment, or any term or condition of employment.

I Will Not threaten any crew member with discharge for failure to join Seine and Line Fishermen's Union of San Pedro.

I Will Not in any other manner interfere with, restrain or coerce crew members in the exercise of their rights to self-organization, to bargain collectively through

representatives of their own choice, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8 (a)(3) of the Act.

I Will Offer to Antoine Affidi, Vincenzo Bulone, Frank Ferrara, Sal Lucca, Rosario Rizza and Nick Mudry immediate and full reinstatement to the positions they held before the discrimination against them, discharging if necessary, any crew member hired since January 1, 1958, without prejudice to seniority or other rights and privileges, and I will make them whole for any loss of earnings suffered as a result of the discrimination against them as set forth in the Order.

All crew members are free to join, form or assist any labor organization, or to engage in self-organization, or other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such rights are affected by an agreement made in conformity with Section 8 (a) (3) of the Act.

Dated .....

MIKE TRAMA (F/V SANDY BOY),  
(Employer)

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This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[Title of Board and Cause.]

MOTION TO TAKE OFFICIAL NOTICE OF  
PRIOR BOARD PROCEEDINGS

Now Comes Respondent, Mike Trama, and pursuant to Sections 102.47 and 102.48(b) of its Rules and Regulations, moves the Board to take official notice in this case of the prior proceedings in the Matter of the Boat Sandy Boy, Case No. 21-RM-471, based upon the following grounds:

I.

On May 28, 1959, Trial Examiner Wallace E. Royster issued his Intermediate Report (IR-(SF)-615) in the above-entitled case (No. 21-CA-2904), wherein he found *inter alia* that "jurisdiction exists and that the purposes of the Act will be effectuated by its assertion" (Intermediate Report, page 4, lines 21-24), based upon the authority of *Siemons Mailing Service*, 122 N.L.R.B., No. 13, decided November 14, 1958.

II.

Respondent duly excepted to said finding in his Exceptions to the Intermediate Report, dated June 18, 1959 (Exceptions, page 1, lines 19-22), as well as to the proposed "back pay" remedy based upon alleged loss of earnings commencing January 1, 1958. (Exceptions, page 2, lines 12-14) In support of his exceptions to this retroactive application of the Board's October 2, 1958 jurisdictional standards in this case, where the Board previously denied relief to him under its 1954 jurisdictional standards (cf. Intermediate Report, page 2, footnote 1), the Respondent duly cited the recent decision in *Wassau Bldg. and Construction Trades Council*, 123 N.L.R.B.,



No. 172, decided June 3, 1959. (Respondent's Brief in Support of Exceptions, page 2, lines 27-32)

### III.

In the Siemons Mailing Service case, the Board respectfully declined to follow the decision of the United States Court of Appeals for the Ninth Circuit in *N.L.R.B. v. Guy F. Atkinson Co.*, 195 F. (2d) 2518 and overruled its own prior decision in *Almeida Bus Service*, 99 N.L.R.B., No. 79, which followed the Ninth Circuit's ruling in *Atkinson*. The Board did not, however, expressly overrule its decision in the *Baltimore Transit Company* case, 47 N.L.R.B. 109, at pp. 112-113, enforced, C.A. 4th, 140 F. (2d) 51, 55, where it was held that dismissal of prior proceedings on jurisdictional grounds was not *res judicata*, but in the exercise of "administrative discretion" back pay and other financial reimbursement would be limited to the period since the data on which the complaint issued. (In the instant case, No. 21-CA-2904, the complaint did not issue until February 27, 1959.)

### IV.

In order to properly decide the issues duly raised by Respondent's Exceptions to the Intermediate Report relative to the matter of retroactive application of the October 2, 1958 jurisdictional standards, which involves a reconciliation of the Siemons Mailing Service decision with the *Wassau Building Trades Council* case and the *Baltimore Transit Company* case, as well as the Ninth Circuit's decision in the *Atkinson* case, the Board should not only have before it the fact that Respondent "was informed that he did not meet jurisdictional standards" in an 8(b)(4) case "in the fall of 1957" (Intermediate Re-

port, page 2, footnote 1), but also the fact that on March 21, 1958, the Regional Director at Los Angeles dismissed his representation petition in Case No. 21-RM-471 on similar grounds.

## V.

By letter dated July 2, 1959, Respondent submitted to the Board a photostatic copy of his petition filed in Case No. 21-RM-471 and a copy of the Regional Director's letter of dismissal dated March 21, 1958, and requested the Board to take "judicial notice" thereof. This formal motion is filed by Respondent in accordance with advice received from the Board's Assistant Executive Secretary in a letter dated July 8, 1958, indicating the necessity for such a formal motion.

## VI.

The Board will take official notice of its own prior proceedings involving the same parties in order to determine whether it would effectuate the policies of the Act to assert jurisdiction in a subsequent unfair labor practice case. (Haleston Drug Stores, Inc. 86 N.L.R.B., No. 125)

Dated: July 31, 1959.

/s/ HOWARD E. MILLER,  
Attorney for Respondent Mike Trama

Affidavit of Service by Mail Attached.

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[Title of Board and Cause.]

CERTIFICATE OF THE NATIONAL LABOR  
RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 102.116, Rules and Regulations of the National Labor Relations Board—Series 8, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a proceeding had before said Board and known upon its records as Case No. 21-CA-2904. Such transcript includes the pleadings and testimony and evidence upon which the order of the Board in said proceeding was entered, and includes also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

1. Stenographic transcript of testimony taken before Trial Examiner Wallace E. Royster on April 13 and 15, 1959, together with all exhibits introduced in evidence at the hearing.

2. Copy of Trial Examiner Royster's Intermediate Report and Recommended Order dated May 28, 1959 (annexed to item 6 below).

3. Respondent's exceptions to the Intermediate Report received June 22, 1959.

4. Respondent's motion to take official notice of prior Board proceedings received August 3, 1959. (Motion granted. See footnote 1, page 2 of Decision and Order).

5. Charging Party's opposition to motion to take official notice of prior Board proceedings received August 10, 1959.

6. Copy of Decision and Order issued by the National Labor Relations Board on November 17, 1959, with Intermediate Report attached.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 15th day of September, 1960.

[Seal]            /s/ OGDEN W. FIELDS,  
    Executive Secretary  
    National Labor Relations Board

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Before the National Labor Relations Board  
 Twenty-first Region

Docket No. 21-CA-2904

In the Matter of:

MIKE TRAMA (F/V SANDY BOY)

and

FISHERMAN'S UNION, LOCAL 33, ILWU.

Hearing Room 2, 849 South Broadway, Los Angeles, California Monday, April 13, 1959.

Pursuant to notice, the above-entitled matter came on for hearing at 10:00 o'clock, A.M.

Before: Wallace E. Royster, Trial Examiner.

Appearances: Sherwin C. MacKenzie, Jr., 849 South Broadway, Los Angeles, California, Appearing as Counsel for General Counsel. Howard E. Miller, Esq., 821 South Pacific Avenue, San Pedro, California, appearing on behalf of Mike Trama. Ben Margolis, Esq., c/o

Margolis, McTernan and Branton, 112 West 9th Street, Los Angeles 15, California, appearing on behalf of Fishermen's Union, Local 33, ILWU, Charging Parties. [1]\*

PROCEEDINGS

Trial Examiner Royster: On the record.

This is a formal hearing before the National Labor Relations Board in the matter of Mike Trama, Case No. 21-CA-2904. [3]

\* \* \* \* \*

Mr. Miller: Your Honor, I don't know whether the motion should be made at this time, or before the first witness. However, the respondent party has maintained and still maintains that the complaint does not state any cause of action, and we would object to any admission of any evidence whether it be at this point or at a later point, based upon the fact that the complaint alleges only that there was \$50,000 worth of jurisdictional business done here during the year 1958, the acts that they complain of occurred during the year 1957. [5]

Trial Examiner: I see.

Mr. Miller: It would be on that on that basis that we object.

Trial Examiner: In any event, we don't have a clerk's file, so this would have to come in. And, actually, for you to have something to refer to to base your objection upon. [6]

\* \* \* \* \*

Mr. Miller: Your Honor, I think that at this point, inasmuch as Mr. MacKenzie is obviously starting his

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\*Page number appearing at top of page of Original Transcript of Record.

case, I would have to renew my objection based upon the fact, as I have said, that the complaint alleges only during 1958 that there was any business done by any of the parties hereto, and the act complained of took place prior to any commerce being done, and, therefore, we say the complaint does not state a sufficient cause of action to enable this Court to proceed.

Trial Examiner: What do you say to that, Mr. MacKenzie?

Mr. MacKenzie: I say that as we develop the record, sir, it will appear that the particular boat that we are concerned with, the Sandy Boy was built in the summer of '57, and first went fishing briefly in September of 1957 when it was thereafter prevented from fishing by a labor dispute, and did not actually begin to fish regularly [7] until the calendar year 1958. And, therefore, we feel that the calendar year 1958 is a proper representative period within the Board's jurisdictional requirements.

Trial Examiner: Well, how do you get jurisdiction over an employer in '57, when he wasn't doing any business, and could not have been in commerce?

Mr. MacKenzie: We feel that in the first place, sir, I think Siemons Mailing Service covers the general problem, that he did not meet the Board's then existing standards. I think—

Trial Examiner: Did he meet any kind of standards then if he wasn't doing any business?

Mr. MacKenzie: In the fall of '57, no. However, he subsequently during the calendar year '58 he did meet our standards. And we can show that in the fall of '58 he would have the business he did in the fall of '58 as an example compared to what he would have done in the

fall of '57, had he not been precluded from doing business by this labor dispute, which we will develop later; he would have met the standards.

Mr. Margolis: May I say a couple of things. First, the boat did do business in '57, as the evidence will show. Second, if you will look at Paragraph 10 of the complaint, you will see that it alleges that on or about January 2, 1958, Respondent discharged the following employees and [8] thereafter failed and refused, and does now fail and refuse to reinstate them to their former, or substantially equivalent positions of employment.

It seems to me that in and of itself is a complete case.

Trial Examiner: Of course, there are unfair labor practices alleged prior to 1958.

Mr. Margolis: Right, but this is a continuing course of conduct which was carried on from 1957, and the impact of the unfair labor practices and the remedy would be in 1958. For example, it would seem to me, let us assume that you had situation of a plant that had never done business and beginning to hire people, they did so discriminatory in manner, and the hired and were in commerce. They wouldn't affect, the unfair labor practices would not be remedial until they were in commerce, but it would be evidence and admissible in evidence what they had done in the process of opening the plant to create unfair labor practices, the situation that existed after they were in commerce.

Actually here the discharges and remedies are with respect to matters that occurred really in 1958, although the sequence of events really started in 1957.

Trial Examiner: I would overrule the objection, but I don't intend to dispose of the matter. I am going to take your objection under consideration in the full record.

Mr. Miller: May I make a comment? The position of the [9] Board and Mr. MacKenzie is a unilateral one, and it is unfair to Mr. Trama inasmuch as if Mr. Trama had sought, and he did seek the aid of the National Labor Relations Board in September, October, November of 1957, he would have been, and was refused the help of the National Labor Relations Board on the basis that he could not prove he was doing any business under commerce. Now, a year and a half later we are in the reverse position that we are now on the responsive end, when we were denied the right to be on the initiatory end. It doesn't seem proper nor fair as far as Mr. Trama is concerned in a hearing of this nature.

Trial Examiner: Well, as I indicated, I am going, I will overrule the objection at the moment and let the evidence come in, but I do not intend to dispose of your objection by that ruling. I will consider it on the record.  
[10]

\* \* \* \* \*

MIKE TRAMA,

a witness called under Rule 43(b), having been first duly sworn, was examined and testified as follows:

Cross-Examination

\* \* \* \* \*

Q. Prior to 1957, or the summer of '57, Mr. Trama, were you not the skipper and owner of the fishing boat Fisherman? [11]

A. Yes, I was. [12]

\* \* \* \* \*

Q. All right, Mike, we will make it more definite. Let us say June of 1957, who were the crew of the Fisherman?



(Testimony of Mike Trama.)

A. Well, Vince Bulone, Sal Lucca, myself, Rosario Rizza, and I think my uncle Mike Trama at the time.

Q. That was Vince Bulone, Sal Lucca?

A. Rosario Rizza.

Q. Rizza? A. And Mike Trama.

Q. That is a different Mike Trama?

A. That is right.

Q. Now, how about Antoine Affidi, was he on the crew of the Fisherman in the summer?

A. I would have to check, Mr. MacKenzie, because I think Mr. Affidi came in later after June. I am not positive, I would have to check my record on that. I don't remember.

Q. All right. Now, how long was Vince Bulone a part of the crew prior to June of 1957?

A. Well, I think it was about six months because the previous year, or about eight months, he went to Alaska for a period of time. I don't recall, I mean, I would say from six to eight months. [13]

Q. All right. Was he on the Fisherman before he went to Alaska? A. Yes, he was.

\* \* \* \* \*

Q. Now, how about Sal Lucca, how long prior to June of 1957 was he on the Fisherman?

A. My memory is not that good. I would have to check the record.

Q. Was it a year, more than a year, less than a year?

A. It could average from six months to one year, I don't know, something like that. [14]

\* \* \* \* \*

Q. How long was Mr. Rizza crew on the Fisherman?

(Testimony of Mike Trama.)

A. Prior, you are talking about prior to June?

Q. Prior to June of '57?

A. Oh, I would say about seven months, six, seven months. [15]

\* \* \* \* \*

Q. Now, Mr. Bulone, Mr. Lucca, Mr. Rizza and Mr. Affidi they were on the Fisherman about June of 1957, isn't that right?

Trial Examiner: He has already testified that Mr. Affidi was not there in June of '57.

Mr. MacKenzie: I think he said he wasn't sure, sir.

The Witness: Well, Mr. MacKenzie, I would have to check the record. I mean, whether it was July or June, or it was in August when he come in, I would have to go into the record, I don't know. [16]

\* \* \* \* \*

Q. (By Mr. MacKenzie): Now, when you had the Fisherman, Mr. Trama, prior to June of 1957, you had a contract with the Seine & Line Fishermen's Union, isn't that right? A. That is correct; yes. [17]

\* \* \* \* \*

Mr. Miller: Your Honor, then I will object to that if he is talking of the contract as not being the best evidence to ask this witness.

Trial Examiner: It is a good objection, I will sustain it.

Mr. MacKenzie: Very well.

Q. Mr. Trama, from your own knowledge, were your crew of the Fisherman in June of '57 and prior thereto members of Seine & Line, or permit holders of Seine & Line Union?

Mr. Miller: Your Honor, I am going to object as

(Testimony of Mike Trama.)

calling for a conclusion of this witness, asking him to testify as to the records of a union over which he has no control.

Mr. MacKenzie: I asked for his knowledge.

Trial Examiner: Yes, I will overrule the objection. You may answer.

The Witness: Well, as far as I know I was paying dues to the Seine & Line Fishermen's Union, yes. I mean, such as the dues and stuff.

Q. (By Mr. MacKenzie): That is dues for these men, right?

A. Right, because I had a contract with the, with that union. I had to give that whatever deductions were made from [18] this man to that union, yes.

Q. And Mr. Lucca, and Mr. Rizza, and Mr. Bulone all had their dues, you paid their dues to Seine & Line?

A. That is correct, yes.

\* \* \* \* \*

Q. (By Mr. MacKenzie): Did you start building a new boat the Sandy Boy in the spring of 1957?

A. Yes, I did. [19]

\* \* \* \* \*

Q. When the Sandy Boy was being built, did the crew of the Fisherman work on the Sandy Boy while it was being built?

A. Yes, they did some help on building the boat. [20]

\* \* \* \* \*

Q. (By Mr. MacKenzie): Do you recall having an oral understanding with the crew of the Fisherman that when the Sandy Boy went fishing they could go as crew if they helped work on the boat?

(Testimony of Mike Trama.)

A. Well, we had an understanding as far as that they were going to come and fish on the bigger boat because more, you know, better opportunity to make more money, more accomodation, and we had understanding with them that they were going to come fishing on the boat, yes.

\* \* \* \* \*

Q. Did they give you a hand building the boat?

A. Yes, they did; yes.

Q. I see. And isn't it a fact that since they had been good fishermen on the Fisherman that you wanted them [21] to come along when the Sandy Boy was built?

A. Well, it is right, yes.

Q. Do you recall just about when the Sandy Boy was finished, Mr. Trama?

A. Well, I think we launched it some time during September 6, or right around that particular date.

Q. This was in 1957? A. '57, yes.

\* \* \* \* \*

Q. (By Mr. MacKenzie): What was the situation in San Pedro Harbor with regard to the two fishermen's unions when you launched the Sandy Boy?

A. You want my opinion, too?

Q. Between the Seine & Line Union and Local 33, not your opinion as to the unions, but what was the circumstances, wasn't there a labor dispute? [22]

A. As far as I knew, and as far as I can recall is that the two unions were trying to overtake one another, as far as I can get it. I mean, don't go definite on this, and there was troubles in setting the price, and trying to get a price between the two unions. When one agreed to a certain price, and another one agreed to another

(Testimony of Mike Trama.)

price, and seemed like to me one union was trying to take their members from one union, the other union was trying to do the opposite, that is the way it seems like to me, it could be. [23]

\* \* \* \* \*

Trial Examiner: Any time during the month of September.

Mr. MacKenzie: Right. He wanted to go fishing with his new boat, what were the circumstances as far as the union was concerned?

The Witness: As far as I recall, when we first launched the boat they were negotiating a price on sardines. I mean, when I say they, I mean the co-op, I am not saying the union, the co-op was trying to get a price from the canneries so they could present it to the members.

Q. (By Mr. MacKenzie): Both Seine & Line Union and Local 33 their members weren't fishing, right?

A. That is correct, yes.

Q. Do you recall after the, or just about the time the Sandy Boy was launched you went and spoke with Mr. John Calise, the secretary business agent of Seine & Line and asked him about a contract covering the Sandy Boy? A. Yes, I did.

Q. Do you recall what Mr. Calise said? Didn't he tell you, that because of the dispute he wouldn't sign a contract, or he wouldn't give you a contract covering the Sandy Boy?

A. No, he didn't say that at all.

Q. What did he say? [24]

A. As I remember correct, he says, that the contract was valid on the Fisherman, he extended to the

(Testimony of Mike Trama.)

Sandy Boy, extended to the Sandy Boy. In other words, he claimed that the contract that I had with him on the Fisherman had followed me, or followed both, I still never know the right answer to that. [25]

\* \* \* \* \*

Q. About the time that the Sandy Boy was launched, did you obtain a contract from Franco-Italian, the cannery concerning deliveries of fish? A. Yes, I did.

\* \* \* \* \*

Q. Using that time that you got a contract with Franco-Italian as a reference point, Mr. Trama, will you tell us about when that was in relation to the time you launched the boat, and the time you went fishing? In other words, was that before you went fishing, or after?

A. No, I think I got the contract on, I say about two weeks after the boat was launched, somewhere around that. [32]

\* \* \* \* \*

Q. Yes. All right. Now then, did you talk with Mr. Calise of Seine & Line concerning a contract covering the Sandy Boy after you got a contract with the cannery? A. Yes, I did.

Q. All right. Will you tell us what was said?

A. Well, as I remember that, when I got this particular contract from Franco-Italian I went to see John Calise at his office, and at the time he was involved with some kind of employment men from the state regarding the member getting some kind of unemployment insurance, or whatever it was, so I went to talk to him. And as he was walking out of the door, I asked him, John, I says, "I have a contract from the cannery guar-

(Testimony of Mike Trama.)

anteeing me \$80 a ton and \$55” or whatever the price happened to be at the time that one of the unions was asking. I says, “This cannery wants to pay the full amount, will you tell us—” I says, “Will you tell us go fishing, and sign a contract with you” I says. And he replied, and he says, as he was walking out the door, he says, “I will not give you a contract, and not even if you get \$150 a ton for your fish”, he says. He says, “You can’t go fishing you cannot go fishing”. [33]

\* \* \* \* \*

Q. (By Mr. MacKenzie): Was the fishing fleet tied up, Mr. Trama, at this time? A. Yes, it was.

\* \* \* \* \*

Do you know why?

The Witness: Well, the why is this, that the boat owners, it seemed to me that the boat owners have accepted a price of \$55 a ton for sardines, and due to the fact that the ILWU was, oh, I don’t know what words to use for it, they were demanding \$80 a ton for sardines, which was a ridiculous [34] price at the time maybe, I don’t know, and while they were asking \$80 a ton, the boat owners I think they already accepted \$55 a ton, that doesn’t mean that the union accepted the \$55 a ton. So they were going to have a meeting to see whether they were going to accept this \$55 a ton. Every time it seems like they were trying to have a meeting they had disruption, they had arguments, they had fights. What ever it was, we just heard about these things, that there were fights between the two unions. That is all I can say. I am not going to go into what their reasons were. I don’t know.

(Testimony of Mike Trama.)

Q. (By Mr. MacKenzie): So, as a result of this conversation with Mr. Calise then, Mr. Trama, you were not able to sign a contract with Seine & Line?

A. Well, I must say this. Well, I went to talk with Calise, there were a couple of guys with me that they heard him say that—may I say their names maybe later on?

Q. Sure.

A. I think Mr. Nick Mudry was with me, and I think Vince Bulone happened to be at the time that Mr. Calise said such words. I don't remember whether anyone else was with me at the time or not. [35]

\* \* \* \* \*

Q. (By Mr. MacKenzie): I just asked you, do you recall having a conversation with Mr. Columbic and Mr. Royal, two or three days after you entered into the contract with the cannery?

A. I recall the conversation before and after, yes.

Q. It all depends, I am talking about the one you had two or three days after you had the contract with the cannery.

A. Yes, I recall that. [40]

\* \* \* \* \*

Q. Do you remember saying that you are interested in going fishing, and you have a contract, what should you do?

A. Yes, I remember telling them that I had a contract. And he says that in order for me to, he says, to do anything with your contract, he says the majority of your crew has to be members of this union. [41]

\* \* \* \* \*



(Testimony of Mike Trama.)

Q. Mr. Columbic showed you that these three men had signed check-off for Local 33?

A. That is correct, yes.

Q. Thereafter you entered into a contract with Local 33? A. Yes, I did. [42]

\* \* \* \* \*

Q. (By Mr. MacKenzie): All right, Mr. Trama, do you recall now that after signing the contract on September 27, 1957, you took the Sandy Boy fishing the evening of that day with Mr. Bulone, Mr. Mudry, Mr. Farrara, your brother Tommy and yourself as crew? [44] A. Yes, I did.

Q. Do you recall that you brought in a load of fish to the cannery the next day?

A. Yes, I do recall it.

Q. When you arrived at the cannery there was a picket line outside the cannery?

A. Yes, there was two picket lines set by the AF of L.

Q. Do you recall that their banners said something about someone was unfair, and they were referring to the Sandy Boy?

A. Something like that, yes. I don't know what the—

Q. (Interposing) and these pickets were from the Seine & Line Fishermen's Union?

\* \* \* \* \*

Q. (By Mr. MacKenzie): Didn't the sign say, AFL-CIO, or Seine & Line Union?

A. Yes, it did.

Q. Didn't they refer to the Sandy Boy, the sign say something about the Sandy Boy?

(Testimony of Mike Trama.)

A. Something was unfair. I don't remember the exact words [45] were, your know, in that picket line, but it said something being unfair.

Q. Did you have any, do you recall Mr. Calise from Seine & Line coming to the dock at the cannery while you were waiting to unload, and Mr. Calise telling you that this picket line was his picket line, that Seine & Line was picketing your boat?

A. I remember he came on the dock, but that was later after we were tied up for about three hours on the wharf, yes.

Q. As a result of this picket line, you wouldn't—

A. (Interposing) the cannery refused to touch the fish on the grounds that there was a picket line there. The minute they would touch our fish the cannery workers would walk out and they wouldn't handle the fish.

Q. That is right. Right after you had been held up for two, three hours by this picket line, Mr. Calise came to the dock?

A. That is correct.

Q. And Mr. Calise told you that he was firing you, or he was charging you with firing two men that belonged to his union, do you remember him telling you that?

A. No. As I recall, I think he said that he represented the boat, he represented the crew on our boat.

Q. That is referring to Sandy Boy? [46]

A. Sandy Boy, yes. And he also said something too that where he said that I left two men on the beach, where he says that I lad them off, which that wasn't true at all.

Q. Which two men was he referring to?

A. He was referring to Nino Affidi and Sal Lucca.

(Testimony of Mike Trama.)

Q. I see. Had you laid off Mr. Lucca and Mr. Affidi?

A. No. They were scared to come fishing due to the fact there was so much threats out at the wharf, they were afraid they were going to get *their busted* if they went fishing.

Q. Now, don't you recall that after a few hours the picket line left, and you were able to give your fish to the cannery? A. Yes, I remember very well.

Q. Don't you remember that the next night you went fishing again, and Mr. Lucca and Mr. Affidi came along, they joined the crew? A. Yes, they did.

Q. They hadn't fished the first night, but they fished the second night? A. That is correct.

Q. And Sandy Boy fished after that for several nights?

A. As I recall, I think we fished five or six nights.

Q. And you brought in loads of fish and gave them to the cannery? A. Right. [47]

Q. And the cannery took the fish?

A. That is right.

\* \* \* \* \*

A. Yes, we fished for five, six nights, yes.

Q. You sold fish each night?

A. Right, that is correct.

Q. After that there was a five-day lapse because of the full moon? A. That is correct, yes.

Q. And then the next load of fish you brought in was about October 17.

A. Well, we had laid off more than what the period had called for the full moon due to the fact that we

(Testimony of Mike Trama.)

thought maybe the two unions were going to settle the price, and we waited till the rest of the fleet go out. And then I think it was, you say what, it was the 16th, the night of the 16th or the night of the 17th we resumed fishing again.

Q. But you didn't fish for several nights after the full moon period was over?

A. No, we had stopped period during the full moon, you can't fish during the full moon.

Q. Right. There was a few more nights that you didn't [48] fish? A. That is correct.

Q. And you didn't fish those few more nights because you understood from the cannery that they wouldn't take your fish?

A. No, I didn't get that right away, I got that later.

Q. All right. Then you did go fishing though on the night of the 17th, or, yes.

A. Yes, I think it was the 17th, something like that.

Q. And you brought in a load of fish, and when you got there the cannery, Mr. Mardesich, the fleet manager of the cannery told you that he wouldn't take your fish.

A. Well, it wasn't a load of fish, it was a portion of a load. There was about—

Q. (Interposing) 15 tons, wasn't there, about?

A. I think it was 7 tons the first time, seven or 14 it could be, you could be right on 14, you know.

Q. Anyway, Mr. Mardesich, Andrew Mardesich, the fleet manager for Franco-Italian told you he couldn't take the fish? A. Yes, that is correct.

Q. And you asked him why he wouldn't take the

(Testimony of Mike Trama.)

fish, and he said that the cannery workers would walk out on the cannery?

A. Yes, he said that they had a letter from the Cannery Workers Union which is affiliated with the, I guess it is [49] AFL-CIO.

Q. That is right.

Q. It said, they had a letter that if they would take fish from my boat, they would pull the cannery workers out of the cannery.

Q. Do you recall Mr. Mardesich saying that he couldn't unload your fish because your fish was hot cargo according to the union?

A. Well, he mentioned something like that, meaning that he couldn't touch it because it was according to the union it was hot cargo or something like that.

\* \* \* \* \*

Q. Now, do you recall, Mr. Trama, that in the week after the 17th when the cannery refused to take your fish that you went to Seine & Line and talked with Nick Pecoraro? A. What was that date again?

Q. This was in the week following the 17th when the cannery refused the fish, do you recall going and talking with Mr. Pecoraro?

A. Yes, I remember having a conversation with him. I can't remember the exact— [50]

\* \* \* \* \*

Q. He works for the union, right?

A. Yes, he does.

Q. Do you recall telling Mr. Pecoraro that the union shouldn't stop you from fishing, but you had a contract with the ILWU?

(Testimony of Mike Trama.)

A. Yes, I told him that these men they wanted to be represented by the ILWU, and I says, therefore, I says, we enter into a contract with the ILWU. I says, why should you stop us from delivering fish? And every time I get around to try to get an answer from them, they walk away, I never get an answer.

Q. Do you recall that he said that in order for you to fish you would have to sign a contract with Seine & Line?

A. This was later on where, you know, they arrived to where they thought they still have me under contract with AF of L even though I didn't know anything about it, they claimed that the contract from the fisherman followed me to the next [51] boat. And they claimed that by doing so, he says, that I would still, I would still have to be, you know, signed contract with AF of L in order to go fishing.

Q. But do you recall Mr. Pecoraro telling you when you talked with him in the week after the 17th when the cannery refused the fish that you would have to sign a contract with Seine & Line in order to go fishing?

A. Well, Mr. MacKenzie, I don't know the date, because you see, during that time these men entered into a lawsuit.

Q. All right. You don't recall that date. Do you recall talking with Mr. Calise during this date after the cannery refused the fish?

A. Yes.

Q. You asked him, John—

A. Yes.

Q. "John, why are you stopping me, and what do I have to do to go fishing." [52]

\* \* \* \* \*

(Testimony of Mike Trama.)

Q. Do you recall talking with Mr. Calise during the week after the cannery refused the fish on October 17th?

A. Well, I recall seeing Mr. Margolis here one time before I went to see John when we were stopped. Let us go into this—

Q. My question was, do you recall talking with Mr. Calise?

A. Yes, that was after I had the conversation with these people here with the ILWU and Mr. Margolis.

Q. We will get to that in a minute, but in the meantime do you recall talking to Mr. Calise?

A. Yes, I do recall it.

Q. You asked him why he was keeping you from fishing, do you recall that?

A. Well, as I recall it, he says that the guys were his members, and that he said he was going to—

Q. Answer the question first. A. I am.

Q. No. Do you recall asking him what you had to do to go [53] fishing?

A. That is what I am trying to answer.

Trial Examiner: Did you ask him that?

The Witness: Yes, I did.

Q. (By Mr. MacKenzie): Do you recall he said that the crew would have to go back to the AF of L?

A. He said that the crew would have to go to the AF of L, and he claimed that the ILWU has raided his men. Now, that is the words that he used. He said that the ILWU got his men when he was short, or something like that, he still claimed that the men were AF of L.

(Testimony of Mike Trama.)

Q. Do you recall him saying that there was going to be a fine for the crew, and that they would have to get straightened out with him before you could go fishing?

A. He said that the men would have to be reinstated, and whatever the Board desired, if there be a fine for them to pay it to the union. He says, yes, I remember that. In other words, he said, you had to bring them before a board and see what the board would decide on them. But, he said, it will probably be a fine.

Q. Before they would go fishing they would have to get straightened out with the union before you could go fishing?

A. Would you, let's see what you are trying, give me that question again. Don't break it up in pieces because I don't know, I don't get it. I am getting confused here. [54]

Q. He said that the crew, do you recall him saying that the crew would have to get straightened out with Seine & Line before you could go fishing?

A. Yes, I think he did say that; yes.

Q. During this same week, the week after October 17, do you recall talking with Mr. Gomez of the Cannery Workers Union, and asking him why you couldn't go fishing?

Mr. Miller: I think that is Mrs. Gomez.

The Witness: That is a Miss.

Mr. MacKenzie: My apologies. Miss or Mrs. Gomez?

A. Yes, we went to have a conversation with, I think



(Testimony of Mike Trama.)

Mr. Mudry was with me at the time we went to see her.

Q. Do you recall that Mrs. Gomez told you you have to see Mr. Calise?

A. Miss Gomez told, she says that she couldn't do anything about it, it was all up to Calise. I told her, why is it up to Calise when you people told the cannery that you wouldn't accept my fish. What seems to be the trouble, I says and she referred me to John Calise, go see Calise.

Q. During this week after the cannery refused your fish, do you recall talking with Mr. Andy, Andrew Mardiesich, the fleet manager for Franco-Italian?

A. I had several talks with him, probably due, yes, I remember that.

Q. You asked him why he wouldn't take the fish?  
[55]

A. Yes, I did.

Q. And he said he couldn't because the cannery workers wouldn't let them take the fish?

A. That is correct.

Q. Mr. Trama, do you recall that after you had talked with Mr. Calise and he told you that the crew would have to get straightened out with the union, did you then have any conversations, do you recall any conversations or talking with the crew about getting straightened out with the union, the Seine & Line union?

A. Well, as I got the message from Calise I had, you know, like mental person, the reason why I can't go fishing is this, this is what the AF of L wants us to do, yes.

(Testimony of Mike Trama.)

Q. Do you recall then, Mr. Trama, that you told the crew, Mr. Bulone, Mr. Affidi, Mr. Lucca, Mr. Rizza and Mr. Mudry that the only way you could go fishing, that they could go fishing was to get on the good side of the Seine & Line? [56]

\* \* \* \* \*

Q. (By Mr. MacKenzie): Just answer the question did you tell the crew, did you say to the crew that the only way you could go fishing was if they got straightened out with the Seine & Line? A. Yes, I did.

Q. The only way all of you could go fishing was if they got straightened out with Seine & Line?

Trial Examiner: Did you want to explain that?

The Witness: Yes, Your Honor, I want to explain it because [57] these men here, they needed the money as much as I did, me building a boat, and them being as one man, they wanted to go to work and make some money, so they were just as interested as I was to go fishing. So they told me to do what I can in order to get this boat fishing. So I went step by step going from Mrs. Gomez to Calise, from Mr. Margolis to John Royal, from John Royal to Calise and back and forth. And the only, we couldn't get no outs in order to go fishing at all. Even at the time we even tried to come up here to the National Labor Relations Board to get some help with this particular thing, see whether we could get some kind of release to go fishing, and we couldn't obtain no help from nobody. So, as I went back to John Calise and asked him what we had to do in order for him to release us. Of course, I had to let these men know. But what could be done, I mean,

(Testimony of Mike Trama.)

I wasn't telling them to do it, but I was referring to them what step we could take in order to go fishing.

Q. (By Mr. MacKenzie): Do you recall saying to the crew that they could go fishing, the only way you could get the Sandy Boy released was if they joined Seine & Line, Calise would only release the boat to fish if they joined the Seine & Line?

A. If they got reinstated in the union, yes, that is what he said. [58]

Q. (By Mr. MacKenzie): Did Mr. Bulone say that he didn't want to be, he didn't want to go back to Seine & Line?

A. Well, I don't remember whether he said definitely not, or whether he said that if we didn't have to pay no fine or anything I will go back, or something like that; some kind of discussion like that went on.

Q. He didn't go back to the Seine & Line, did he?

A. He didn't, no.

Q. Did Mr. Affidi say that he wouldn't go back to Seine & Line?

A. Yes, he said he wouldn't go back.

Q. Did Mr Lucca say that he wouldn't go back?

A. Well, they all followed suit, in other words, one guy [59] said no, they all stuck together like that.

Q. All of the crew told you that they didn't want to go back to Seine & Line? A. That is correct.

Q. All right. Did you then go to Calise and tell him that the crew didn't want to go back to Seine & Line? Did you then tell Mr. Calise that the crew didn't want to go back to Seine & Line?

A. No, I didn't tell him anything, we just tied the

(Testimony of Mike Trama.)

boat up. That was before, this is the question, no, I didn't go to see Mr. Calise.

Q. Didn't you tell Mr. Calise that the men weren't willing to go back to Seine & Line?

A. I don't think I told Calise, maybe I told Nick or somebody else; I told somebody they wouldn't go.

Q. Did you tell someone from Seine & Line?

A. Yes, I did.

Q. Do you recall whether it was Mr. Calise?

A. I don't recall who it was, but I remember telling one of the guys, [60]

\* \* \* \* \*

Q. Do you remember saying that to Mr. Calise?

A. I told Calise, and I told it to one of his executives there, whatever it was.

Q. That the crew weren't willing to come back to Seine & Line? A. Yes.

Q. Do you recall him saying that in order to go fishing you would have to come back in the AF of L and get the men [61] to agree?

A. I said in order for you to go fishing, he says, you have to get reinstated in the union again.

Q. And get the men to agree?

A. Yes, he say for me to get the men to agree, he says they have to.

Q. Do you recall that he said that you should get the men to agree to come back to AF of L, he said that?

A. Yes, he said something like that where the guys would have to come back and get reinstated.

\* \* \* \* \*

Q. Mr. Trama, do you recall that Mr. Calise told

(Testimony of Mike Trama.)

you that the crew would have to come back to the AF of L, and you should get the men to agree, or get a crew that would agree?

A. Yes, that is what he said all right. [62]

\* \* \* \* \*

Q. (By Mr. MacKenzie): Mr. Trama, going back to October 17 when the Sandy Boy brought in a load of fish and the cannery Franco-Italian wouldn't take it, is that right? A. That is correct, yes.

Q. Do you recall that for about a week after that you didn't fish? A. Yes, I do.

Q. Then you went out and you tried, you fished again and brought in another load, and do you recall the cannery wouldn't take the fish either?

A. That is correct.

Q. They wouldn't take it for the same reason that the cannery workers wouldn't handle it?

A. That is correct.

Q. Did you try and fish any more after that, Mr. Trama?

A. No, we didn't think it was any more use to try to fish because every time we bring in a load, why, it would just spoil. [64]

Q. You kept in contact with Mr. Mardesich, and he told you every time you spoke with him that the cannery workers still wouldn't let you take, wouldn't let them take the fish? A. That is right.

Q. All right. Do you recall, Mr. Trama, that about the end of October, on October 28 to be exact, the crew, that is, Mr. Lucca, Mr. Bulone, Mr. Affidi, Mr. Ferrara and Mr. Rizza and Mr. Mudry brought suit against you and the Franco-Italian Packing Company, and Seine &

(Testimony of Mike Trama.)

Line Union, and the Cannery Workers Union, and several individual officers of the various unions for damages for loss of earnings?

Mr. Miller: Your Honor, I am going to object to that, he is calling for a conclusion of this witness. I will stipulate that a suit was filed on that day, but not that Mr. Trama knew that it was filed.

Mr. MacKenzie: All right. Nevertheless, we will stipulate then that the suit was filed on that day.

Mr. Miller: Yes. [65]

Q. (By Mr. MacKenzie): You recall, don't you, Mr. Trama, that within a day or two after the suit was filed about the end of October, you became aware the crew were suing you and the cannery and all the rest?

A. Yes, I was aware to it.

Q. This is along about the end of October?

A. Oh, long and before that.

\* \* \* \* \*

Q. (By Mr. MacKenzie): Do you recall, or you recall, don't you, Mr. Trama, after the filing of the suit talking with Mr. Calise, and he told you that before he would let the boat go fishing the crew would have to join the Seine & Line, and each man would have to pay a \$300 fine, and they would have [67] to drop the suit.

A. You mean after the suit was filed?

Q. That is right, after the suit was filed?

A. Yes, he said something like that where he says as long as this crew was going to sue the cannery workers and myself and you and so forth, we don't feel obligated in packing the fish. In other words, he said, his union was not going to handle the fish.

Q. He added that they would have to pay a \$300

(Testimony of Mike Trama.)

fine and come back to the AF of L before he would let you fish?

A. He said some kind of fine, I forgot what it was.

\* \* \* \* \*

The Witness: No, I never directed them, no. The only [68] thing I was doing is whatever was said to me, whatever we could do to go fishing, I would just pass it on to them, but I never said that they had to do it, or have to do it, no. [69]

\* \* \* \* \*

Trial Examiner: All right. In the light of that answer then, did you say anything to the crew about getting straightened out with Seine & Line?

The Witness: Yes, whatever Calise told me that is what I passed on to the crew as he wanted it. He never said what I wanted them to do, it is whatever the union wanted us to do in order to get straightened out.

\* \* \* \* \*

Trial Examiner: Just what did he say, did he say this [70] to the crew that they had to get straightened out with the Seine & Line Union in order to fish?

The Witness: I said that we would all have to get straightened out, I just didn't say that they would have to go, I said we all had to get straightened out with the AF of L.

Trial Examiner: In order to fish?

The Witness: In order to fish, yes. [71]

\* \* \* \* \*

Q. (By Mr. MacKenzie): Do you recall that the cannery got an injunction against the Cannery Workers Union?

\* \* \* \* \*

(Testimony of Mike Trama.)

The Witness: Yes, I remember getting an injunction, yes.

Q. (By Mr. MacKenzie): After that injunction did you go fishing? A. Yes, we did.

Q. Did the cannery take the fish?

A. Well, the season was about over then.

Q. Did the cannery take the fish?

A. I don't know whether we had one or two deliveries because it was right near the end of the season.

Q. But you recall you had at least one delivery?

A. I think so, yes.

Q. And the cannery took it? A. Yes. [73]

\* \* \* \* \*

Q. (By Mr. MacKenzie): Mr. Trama, do you now recall telling the crew after they filed this suit against you, and before the injunction, that because the sardine season would be over in December, and you didn't know what you would, what you would do with the boat, and might sell it, then they should look for other employment?

A. Yes, I told them that. Can I explain something at this point? A. Yes.

Trial Examiner: If it has to do with your answer, yes.

The Witness: Yes, it has, because at this time all of these fellows except Mudry, and maybe Affidi, they went to work on another boat, and because they went to work in another boat they had some trouble with the union, too where certain stoppage was, in other words, they stopped this other boat from delivering fish until such time that this fellow tried to get an injunction to stop one thing or another, and they were released.



(Testimony of Mike Trama.)

And then, you know, I didn't see them until later time, and I told them that at the end of the year. [77]

Mr. Margolis: May I interrupt. I move to strike the answer as not responsive, and it is hearsay; no foundation.

Trial Examiner: I will let him finish the answer, and then I will rule on your motion. Go ahead.

The Witness: These fellows went fishing with another boat because of the troubles we had with this union. They were also stopped on this other boat for a night or two, or whatever it was, and then the owner of the boat got some release for these fellows to fish, and they did. And as they got a job on another boat, and I told them the Sandy Boy was going to be tied up until the season, you know, until the season was on, or after, I says, we can't go fishing. I said, if we can't fish after the season, I says, you fellows go ahead and get another job on another boat. [78]

\* \* \* \* \*

Q. (By Mr. MacKenzie): Isn't it a fact, Mr. Trama, that you were telling the crew this, that as of that time that you were not going to rehire them at the end of the season?

A. At what time, Mr. MacKenzie?

Q. When you told them that because of the suit you didn't want them back, weren't you telling them that then as of that time you weren't going to hire them at the end of the season? [79]

A. Yes, I told them that they couldn't at the end of the season they wouldn't be hired again for the coming season, but I said if the boat gets released in any

(Testimony of Mike Trama.)

way that we will finish out the season, they were going to come back on the boat.

\* \* \* \* \*

Weren't you telling them this so that they could look for other jobs prior to the start of the mackerel season? A. Yes, I did.

Q. Didn't you also tell them that you didn't want them back in the mackerel season because the Seine & Line still might say they were unfair?

A. No, I didn't say that. I said that as long as they were going to sue me and we are going to have to live together, I said it is not a good practice, it wasn't in good harmony that we still fish in the same boat. That was one of my reasons for discharging these men.  
[80]

\* \* \* \* \*

Was one of the reasons you discharged the crew because if you kept them in the mackerel season you still might not be able to fish if the Seine & Line said they were unfair?

A. That was one of the reasons, I would say yes.  
[82]

\* \* \* \* \*

Q. (By Mr. MacKenzie): Did you tell the crew on the 27th or 28th of December, Mr. Trama, that they had the suit against you, and because the season was over and they were suing you, that as long as they were going to sue you, you were going to discharge them because—you were going to discharge them?

A. Well, yes, that the season was over, and due to the fact they brought the suit for it, and I told them

there wouldn't be any harmony on the boat, and I told them to look for other [83] employment.

\* \* \* \* \*

Q. (By Mr. MacKenzie): Do you recall who was there, Mr. Trama?

A. Yes, I do recall, it was Vince Bulone, Mike Farrara, Sal Lucca, and I think possibly Rosario Rizza, was present, and Mr. Mudry and Mr. Affidi wasn't there. [84]

\* \* \* \* \*

Q. (By Mr. MacKenzie): Mr. Trama, did you send any letter to anyone else besides those four? [85]

A. Yes, I sent a letter to Mr. Mudry too, even though he wasn't—

Q. Mr. Mudry's letter is included in there, there is no letter for Rizza or Affidi.

A. Well, I think there is, should be.

Q. Well, did you send letters to Mr. Rizza and Mr. Affidi?

A. Yes, I did.

Q. The same letters as Mr. Bulone's Mr. Lucca's and Mr. Farra's?

A. Yes, sir. [86]

\* \* \* \* \*

Q. Mr. Trama, you recall, don't you, that when you took the crew on for, or when the crew began fishing with you with the Sanyd Boy that you didn't say anything to them about whether or not they would be on just for the sardine season or not?

A. Well, we take it, we don't say it, but you take into consideration when you hire men that you hire for the season.

Q. You didn't say anything to them?

A. No, but I would say it is like a general rule though when you do hire a man, it is for the season.

(Testimony of Mike Trama.)

Q. But you didn't say anything to them?

A. No, there was nothing said. [88]

\* \* \* \* \*

Your sardine season in 1957 started September [89] 1st even though you didn't go fishing September 1st, and it ended January 1st, 1958 or December 31st, 1957. Now, during that period you had a crew, is that right, and that crew in addition to yourself consisted of Sal Lucca, Vincenzo Bulone and Antoine Affidi, Fran Garra, Rosario Rizza and Nich Mudry, right?

A. Well, Nich Mudry wasn't on the Fisherman at all, I man before we—

Q. I am not talking about the Fisherman now, I am talking about the members of your crew during the 1957 sardine season.

A. I see.

Q. Those were men who were members of your crew during the 1957 sardine season?

A. Right.

Q. Were any of those men members of the crew when you first began to operate the Fisherman?

A. Yes, some of them were, yes.

Q. Which ones were?

A. Bulone was, and Affidi was part time, and Sal Lucca was part time, and I think Farra was part time.

Q. And those men continued to fish with you most of the time from tht time on until you fired them at the end of 1957 sardine season, isn't that right?

A. Well, I wouldn't say most of the time, some of the time be-[90]cause I think Affidi get off to go to Mexico, as I said before, Bulone went to Alaska, and Farra quit, couple of, he quit and went to another boat, then he was hired, rehired again.

(Testimony of Mike Trama.)

Q. They were never discharged by you before December 31st, 1957, were they?      A. No.

A. No.

Q. When they quit and they came back if you had a place, a vacancy on the boat they always got it, didn't they?      A. That is correct.

Q. The reason that they always got it, the reason that they stayed with you is because you thought they were good fishermen and you wanted them on your boat, isn't that right?      A. Yes, that is right.

Q. Now, some time during the course of the 1957 sardine season you arrived at the conclusion that you were going to fire your entire 1957 sardine crew, did you not?

A. Yes, at the late part of the season I did, yes.

Q. All right. Now, can you fix as closely as possible either in terms of date or in terms of events in terms of things that happened when you made up your mind that you were going to fire your entire 1957 sardine crew?

A. Well, it was nearer December, as close as I can remember, near the end of the season, right about. [91]

Q. Before the beginning of December or after December had begun?

A. It was right in December—

\* \* \* \* \*

You didn't make up your mind one day, well, I think I will fire Mudry, the other day, I think I will fire Afidi, the other day I think I will fire somebody else, rather you made up your mind at one time that you were going to fire the whole crew, isn't that right?

A. Yes, that is correct.

(Testimony of Mike Trama.)

Q. Now, when was it, if anything, that happened immediately preceding the time that you made up your mind to fire the entire crew that had any connection with your firing of the crew, did anything happen before that?

A. Well, there was certain discussion about these lawsuits all the time on the boat, and they were going to get \$20,000, they were going to do this, and they were going to do that. You get tired of hearing those things. I don't think there was a day there was certain discussion where we weren't talking about lawsuits, and so forth. That just made me very irritated and nervous. I don't think I could [92] bear to fish with those men.

Q. In other words, the reason that you fired these men was because they joined together to sue you in Court, is that right, to sue you for damages?

A. That was one reason, Mr. Margolis.

\* \* \* \* \*

You have told us that one of the things that happened before you made up your mind to fire them was the filing of the lawsuit and the discussion about it. Was there anything else that happened immediately before you fired them that had anything to do with your firing?

A. Well, I could see on the boat there was no harmony, I mean, as far as being a crew member, and me as being an employee, there was no harmony, no feelings that as far as I was concerned that we had to make a living together. I mean,—[93]

\* \* \* \* \*

Q. Let me ask you this, just before you fired the men, isn't it a fact that you went to talk to Calise and

(Testimony of Mike Trama.)

other [95] representatives of the Seine & Line Union to see if you could get the boat back in good standing with the Seine & Line Union, is that right?

A. That is after you failed to do something for me I went to see them.

\* \* \* \* \*

Q. You went to see the Seine & Line Union to see if you couldn't get the boat back in good standing with the Seine & Line Union, isn't that what you did?

A. I went to see anybody concerning these lawsuits.

Q. I don't care who else you went to see, I want to know just this one thing, did you go to see the men from the Seine & Line Union, Calise and the others about the question of getting the boat back in good standing with the Seine & Line Union?

A. Yes, I went to see whether I could get the boat and crew released so we could resume the fishing. I still wanted to keep what I had, and still fish, if I could, with the same intentions.

A. All right. And Mr. Calise and others told you that in order for the crew, in order for the boat to get back in good standing with the Seine & Line Union, the crew [96] had to do certain things, isn't that right.

A. He said that the crew would have to get reinstated. He said,—

Q. And he said they would have to pay a fine, didn't he?

A. Well, I don't know whether he said they have to pay fine or not at the end, I don't recall that.

Q. Don't you recall testifying here a while ago that he said they would have to pay a fine but you didn't remember how much?

(Testimony of Mike Trama.)

A. You said after I fired the crew. I don't remember that, but before that he did, yes.

\* \* \* \* \*

There was a time when you made up your mind that you were going to fire the crew, not when you fired them, but you made up your mind that you were going to do it. You had to make up your mind before you did it, right? I am talking about things that happened just before you made up your mind that you were going to fire the crew. Now, do you follow me?

A. Yes, I do.

Q. All right. Now, just before you made up your mind that you were going to fire the crew, you had tried to get [97] the vessel back in good standing with the Seine & Line Union, and had been told that the men would have to do these various things if the vessel was to get back in good standing, isn't that right?

\* \* \* \* \*

A. I went to see Calise with the hope to release the men and myself, that he no longer would have claim on the boat so we could resume fishing.

Q. You were told that the only way you could do that was to get back in good standing with the Seine & Line Union, isn't that right?

A. No, he didn't say that. He says he couldn't do it, he says, under those circumstances that they are now, he says, as long as the crew is going to sue the union we are not going to release you. That is what he told me. Now, does that answer the question, Mr. Margolis.

Q. And he also told you, didn't he, that the men would have to get back in good standing with the Seine & Line Union?



(Testimony of Mike Trama.)

A. As he claimed at the first, he claimed to the end of [98] the season. At the end he claimed, at first that these men be reinstated, he claimed at the end of the season that he still wanted these guys to be reinstated in his union, that is what he told me.

Q. And then you went and you told the men, did you not, that you wanted to get the boat fishing? Didn't you tell the men you wanted to get the boat out fishing?

A. Sure, I was concerned to get the boat fishing.

Q. You told that to the men?           A. Yes.

Q. You told them the only way you could get the boat out fishing was if they would do the things that the Seine & Line Union wanted them to do, didn't you say that to them?

A. Yes, that is right.

Q. And they told you that they wouldn't do that, that they wouldn't do the things the Seine & Line Union wanted them to do, isn't that right?

A. That is right.

Q. And then you made up your mind with that as one reason that you were going to fire these men, isn't that a fact?

A. No, that wasn't the reason, Mr. Margolis.

Q. Was it one of the reasons?

A. The reason was that if they wanted to start a lawsuit they were going to keep suing me. [99]

\* \* \* \* \*

Trial Examiner: Your answer is yes?

The Witness: Yes.

Q. (By Mr. Margolis): Did you ever tell the men in your 1957 crew at any time prior to the time that

(Testimony of Mike Trama.)

you fired them that maybe if you got rid of them you would be able to work things out a little easier with the Seine & Line Union, and again I am not trying to give exact words, but the substance of that, did you say anything like that to them?

A. I don't remember. I mean, I could or could not, I don't remember.

Q. And the reason you don't remember, Mr. Trama is because one of the reasons you fired these men was because you wanted to make things easier with the Seine & Line Union, isn't that the reason why you don't remember? [104]

A. No, it is not the reason. The reason could be because if I kept them on the boat it would jeopardize my boat, my life. Who knows what is going to happen on the boat when you take a bunch of men and they start suing somebody, or doing something. You don't know what their next step is going to be. I felt that I didn't have no control over these men. They was, you know, there is a lot of things that go into your mind such as those if you don't have control, taking guys out to work, and perhaps the next thing you don't know whether these men are going to take over, and perhaps they are going to run my boat, or run it on the rocks. They can do anything they want.

Q. That is what ran through your mind?

A. Lots of things go through a man's mind. [105]

\* \* \* \* \*

Q. (By Mr. Miller): Mr. Trama, I would like to go back to the point after you had made some deliveries of fish to the Franco-Italian Cannery, you stopped fishing because of the light of the moon, is that correct?

(Testimony of Mike Trama.)

A. Yes, that is correct. [107]

Q. After that could you get any orders from them to bring in fish?

A. I think it was later on that we couldn't get no order saying that after we waited four, five days after the full moon period, we still waited then to see whether or not the whole fleet was going to sail or not, then I went back to see whether we had an order for fish, and we didn't.

Q. You don't just go out and catch fish and bring it in and try to sell it?

A. No, sir, you have to have an order to sell these fish.

Q. After your initial deliveries you couldn't obtain an order is that right, from Franco-Italian Packing Company?

A. We had a written order from them, but it seemed like it wasn't any good. Even though I had a written order, and the man said I don't want your fish, or don't go fishing you don't have an order tonight, that doesn't mean that you have to go out and bring it to him and they have to take it, no.

Q. Did you try to sell fish to any other cannery in the harbor?

A. Yes, I tried to several canneries and they all gave me the same answers, to get straightened out with the unions first.

Q. Now, in September of 1957 Mr. Affidi was on the boat, was he not, Antoine Affidi? [108]

A. You mean on the Sandy Boy?

Q. On the Sandy Boy?           A. Yes, he was.

(Testimony of Mike Trama.)

Q. In December was Mr. Affidi on the boat?

A. No, he wasn't.

Q. Where was Mr. Affidi, if you know?

A. Well, I have heard that he went back to France for a trip. [109]

\* \* \* \* \*

Q. After someone obtained an injunction did you go fishing with the boat Sandy Boy?

A. Yes, we did.

Q. Who was on your crew when you went fishing?

A. Well, there was myself, Vince Bulone, Frank Farrara, Sal Lucca, and I think I hired a new man by the name of Clyde Hill because Mr. Mudry didn't show up.

Q. Did you call Mr. Mudry to come to work?

A. Yes, I did.

Q. Did you have a conversation with him?

A. No, not with him. I called his wife. She told me that he was at work, and I talked to his wife.

Q. Now, do you recall how many days you went fishing after the injunction?

A. I don't know whether the injunction was obtained around the 20th, or something like that. I imagine we must have fished about a week in late '58, yes, '58.

Q. '57? A. '57, I mean.

Q. Now, the men that we talked about were on the boat all during that period of time when you went fishing after [110] the injunction?

A. Yes, they were on, Rizza, by the way, Rizza was on it, too.

Q. Rizza?

(Testimony of Mike Trama.)

A. Yes, Rosario Rizza was on, just slipped my mind.

Q. And they were paid for the fish that you caught?

A. Yes, whatever catch we had in that particular week they were paid for.

Q. Mr. Trama, there has been some question concerning your conversation with John Calise. Did you have one or more conversations with Mr. Calise during the period of October through December 31 of 1957?

A. Yes, I had many conversations with him.

Q. Did you have conversations also with either John Royal or Mel Columbic or the ILWU Union at that time? A. Just about every day. [111]

\* \* \* \* \*

Q. What I am getting at, at the beginning of the sardine season for 1957 you had confidence in these men as fishermen, and friends, is that correct?

A. That is correct.

Q. At the time that you had decided to discharge them did you still have the same feeling towards them?

A. Yes, I still had the same feeling, we were still friends under the circumstances, I mean.

Q. Did you have confidence in their ability on the boat at that time?

A. I don't know, it is hard to say.

Q. At the time that you decided to discharge them did you have that confidence?

A. No, I was losing confidence in them. I felt that they were run by somebody other than themselves. I had the confidence that somebody was running them, not themselves any more. In other words, what I mean by it, that they are good workers. If somebody tells

(Testimony of Mike Trama.)

you, don't do that otherwise why they start going back.

Q. You feel that they weren't loyal to you?

A. That is correct. [112]

Q. Now, for the purpose of the record, Mr. Trama, how big is the boat Sandy Boy?

A. Well, it registers 44 foot on the keel, and true width if about 16 foot wide.

Q. How big are the living quarters on that boat?

A. Oh, I would say maybe not even a third of this room.

Q. How wide is the cabin?

A. I think it is ten and a half feet wide, or ten feet.

Q. About how long?

A. About 11 foot, 11, 12 feet long.

Q. In that 10 by 11 or 12 feet rectangle you have bunk?

A. Yes, there are eight bunks.

Q. Each bunk is about six feet long, isn't it?

A. Yes, the bunk is about six foot.

Q. Four bunks on each side of the cabin, four high?

A. No, there are three on one side, there is three on the starboard side, two on the portside, and there is three, well, there is a partition there, then there is three crosswise.

Q. And also in this area is your kitchen?

A. In this particular 12 feet, yes, there is.

Q. The eating area is also in there, is that correct?

A. Within that 12 feet, yes.

Q. And that is where the crew and you are during the time that you are fishing, if you are not aboard up topside steering the boat, is that right? [113]

A. Well, most of us, yes, we were down below.

(Testimony of Mike Trama.)

Q. In fishing how long are you away from the port, on an average?

A. Well, a couple of days. We have been as long as a week up to intermittent, one night, come back in the morning, go back out. But we do stay out sometimes a week at a time.

Q. At this particular time of the year the sardine season, it is a daily trip, isn't it?

A. That is right, it is. [114]

\* \* \* \* \*

Q. You hired a crew in 1958 to operate the boat, with a crew in 1958, did you not?           A. Yes, I did.

\* \* \* \* \*

Q. Did you, beginning in 1958, start checking or checking off dues from all of the members of your crew and paying those dues over to the Seine & Line Union?

A. No, I wasn't paying them, no one, to either one union.

Q. You weren't paying anyone. Do you have your settlement sheets here?

A. I think I have. I think they are right there (indicating).

Mr. Miller: Are you talking for the year 1958 when you say settlement sheets?

Mr. Margolis: Yes, 1958.

Mr. Miller: We have them right here.

The Witness: What I meant to say, I withheld all their money, but it was never paid to an individual union, [115] either one of them. I was just holding it until somebody desired what it was to be done.

(Testimony of Mike Trama.)

Q. (By Mr. Margolis): You just withheld their dues?  
A. Yes.

Q. Did you pay it to anybody? Are you still holding it?

A. No, I paid to somebody now, it is to who the crew wanted it to go to.

Q. Who did the crew want it to go to?

A. They wanted the AF of L to be, they wanted to be paid up with the AF of L.

Q. So you started deducting dues from the crew members wages before you knew whether they wanted any union?

A. No, they said they wanted a union; they said they wanted a union.

Q. But they said they didn't know what union they wanted?

A. They knew, but they didn't say at the time I heard them, no.

Q. When you went to make a deduction the first time you made a deduction for dues right from the very beginning, didn't you?

A. Not from the very beginning, no. I think it was a month or two, I don't know whether it was a month or two, or what it was.

Q. The settlement sheets I have in front of me show no dues deductions for the month of January, 1958, and [116] dues deductions beginning in, wait a minute, let me show you this. Here is a settlement sheet January 2nd, 1958 right?  
A. Yes.

Q. All right. Now, that is for the month of December, isn't it? In other words, on January 2nd you settled for the month of December?



(Testimony of Mike Trama.)

A. Yes, that was whatever fish was caught during the month of December.

Q. That was with the crew consisting of yourself, Mr. Bulone, Sal Lucca, Rosario Rizza, Mr. Farra and Joe, blank—

The Witness: Joe Parisi, I didn't have his first name.

Q. (By Mr. Margolis): So, in December you didn't collect any checkoff, any union dues, is that right?

A. That is correct, yes.

Q. Now, your first accounting in 1958 was the accounting of February 4, 1958, is that right?

A. Yes.

Q. That was for the month of January, wasn't it?

A. Which one?

Q. February 4, 1958, wasn't that an accounting for the month of January? A. Yes, it was.

Q. And then you had a new crew, Mike Trama, Frank Galonna? [117] A. Yes.

Q. Clyde Hill, Joe Parisi, Vince Pamora and—

A. Joe Jaccalonia.

Q. Joe Jaccalonia. And in February you deducted dues for the month of January, 1958, didn't you?

A. Yes, I did.

Q. So that you deducted dues from the very beginning of 1958 for your 1958 crew, didn't you?

A. Yes, I did.

Q. And you deducted dues for the Seine & Line Union from the very beginning of 1958, didn't you?

A. I did not.

Q. Did you have any conversation with the members of your crew about the dues deductions before you made them? A. Yes, I did.

(Testimony of Mike Trama.)

Q. Who did you talk to?

A. I talked to the whole crew there, the new crew.

Q. What did you say to them, and what did they say to you?

A. They told me, they said to go ahead and make the deductions and hold it in your account, he says, until the squabbles with the union are settled. They said they don't know whether we are going to go with the AF or L or with the ILW due to the fact they were having all these troubles, so they said, you hold our dues, and when we decide which union we want you will pay it to that union. [118]

\* \* \* \* \*

Q. During 1957 when you came in, Local 33 patrolled your boat, didn't they?      A. That is correct.

Q. During 1958, Seine & Line patrolled your boat, didn't they?      A. That is correct.

Q. How did that happen?

A. It is beyond me, Mr. Margolis.

Q. You just don't know anything about it, do you, Mr. Trama?      A. No.

Q. Not a thing?      A. The only thing—

Q. It just happened?

A. The only thing I can say is both of the two patrols showed up. We have a barge that is set there on the wharf that when you come in the fish, when you call in the barge, when you call in the barge they usually send a patrol. Just happen a few times the boat patrols would come in, and at the later time they must have some kind of discussion among themselves, or that the crew must have wanted the AF of L, or

(Testimony of Mike Trama.)

whatever it was, I don't know. Something happened where the ILWU didn't come around no more, and the AF of L would [120] come instead. [121]

\* \* \* \* \*

Mr. MacKenzie: I would like to propose a stipulation at this time, Mr. Examiner, that on September 28th, 1957, Mr. Trama sold 76,800 pounds of fish to Franco-Italian Cannery to the value of \$3,072.00. On September 30th, 1957 he sold 67,000 pounds of fish to Franco-Italian to the value of \$2,680. On October 1, 1957, he sold 25,000 pounds of fish to Franco-Italian to the value of \$1,000. And, on October 2, 1957 he sold 84,000 pounds of fish to Franco-Italian to the value of \$3,360. That is a sum total of \$10,112.

Trial Examiner: Do you so stipulate?

Mr. Miller: Yes, I will so stipulate. [125]

\* \* \* \* \*

### NICHOLAS MUDRY

was called as a witness on behalf of the General Counsel, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

\* \* \* \* \*

Q. What is your, what kind of work do you do, Mr. Mudry?

A. Machinist and a fisherman, two different occupations.

Q. Were you ever employed by Mr. Trama?

A. Yes, I was.

Q. Will you tell us the circumstances under which you became employed by Mr. Trama?

(Testimony of Nicholas Mudry.)

A. It started way back in the early part of June,

\* \* \* \* \*

A. His father Santo Trama called me up on the telephone, told me that him and Mike were building a new boat. They wanted to know if I could install the motor, the propellor for them on week ends and come fishing with him. And we did make, I did make an arrangement. He called me up in the latter part of the week. I made an arrangement to see him on Sunday, see the boat, and see what needed to be done. See if [126] I could do it, what the deal was. So I went down and seen him Sunday, and I went down and seen the boat there. He showed me what it was, discussed it quite a bit. And like first over the phone, he did say for me, he'd like me to install it on week ends. I was supposed to be working then. I told him the job was too big, the job was too big, that it couldn't be done week ends, but I would be glad to do it as a full-time job. And Mike and Santo, like, we did discuss terms like he offered me the job over the phone as for week ends, that would be crew on the, fishing on the boat. As long as it couldn't be done on the week ends, we did work my work steady because I needed it to live on. During that period between Mike and him they agreed they would pay me something for working on that at the time, enough to live on at the time, the balance later, plus I would be the engineer on the boat. [127]

\* \* \* \* \*

Q. Excuse me. What were you to receive in return for this work you were going to do?

A. They was going to pay me the same wages I

(Testimony of Nicholas Mudry.)

always got, only a hundred dollars in account per week for living expenses until we went fishing. And when we went fishing I would be a member of the crew.

Q. Was anything said as to how long you were going to be a member of the crew?

A. Oh, yes, it would be, I would say as long as I wanted, wanted me to be on there indefinitely because he has worked on my boat, he knows how I take care of the equipment. He wanted me to do the same for his boat, said it would be a good engineer between me and him tuna season and all through the time we could make very good money, and I could, I would stay there, you might say indefinitely. [128]

Q. Would you tell us whether or not Mike Trama or Santo Trama told you that you would just be on the boat for the sardine season?

A. No, they never did. They said more about the tuna season the following year, albacore and tuna is where we make the real big money. [129]

\* \* \* \* \*

Q. Did you ever become a member or permit member of Local 33? [130]

A. Yes, I did.

Q. When was that?

A. I would say about latter part of September, just before I went fishing.

Q. Will you tell us the circumstances of your becoming a member of Local 33? [131]

\* \* \* \* \*

Trial Examiner: Well, apparently you and Mike Trama went over to Local 33's office on one occasion, and then you came back the next day.

The Witness: Yes, sir.

(Testimony of Nicholas Mudry.)

Trial Examiner: Then tell us what took place on the second day?

The Witness: Well, the second day Mel told both me, [134] Mike and I that we could go fishing if Mike's crew or the crew was represented by their union.

Q. (By Mr. MacKenzie): What did Mr. Trama say, if anything, in this conversation?

A. Well, that is all we had to do now is just, I think Mel did ask Mike who represented who of the crew, if they was represented by us. I think Mike gave him the name, Mike says, as long as we get this crew now to be represented by ILWU will sign the contract, they will let us go fishing with the unions, both unions were demanding we could go fishing as long as we met the price the unions were demanding.

Q. What did Mr. Trama say, if anything to you?

A. Well, it was pointed out by Mel at that time I don't think he had a majority, pointed out by Mel that four,—we did ask Mel if we could belong to his union. He brought out a piece of paper from National Labor Relations Board ballot stating that a man can join any union of his choice, and it is his choice so we decided we could join that union and go through it. And Mike says, that is up to me to go ahead and get the men to join this union we go fishing.

Q. Did you thereafter speak to the men about joining?

A. Yes, we gave the men all the information about going fishing, becoming members of that union, we could go fishing, yes, yes.

Q. Did you tell them that they should join Local 33? [135]

A. Yes.

(Testimony of Nicholas Mudry.)

Q. Did Mr. Trama say in your presence say anything to the crew about joining Local 33? A. Yes.

Q. What did he say?

A. Oh, about the same thing, that we could go fishing. In fact, a couple of them don't talk very good English, he did interpret what we had to do, gave them the information that they could go fishing if he had a contract with this local.

Q. Which local is that? A. That is 33.

Q. Is that all that Mr. Trama said?

A. I think there was a conversation for two or three days, so, it must have quite a bit more between me and Mike and the crew and the unions, yes. [136]

\* \* \* \* \*

Q. (By Mr. MacKenzie): Now, Mr. Mudry, do you recall that after you fished for several days the cannery refused to take the fish?

A. Yes, I did; yes, that is true, yes.

Q. Do you recall any conversations with Mr. Trama after the cannery refused the fish in which the Seine & Line or Cannery Workers was discussed?

A. Yes, that is with Mike Trama. [137]

\* \* \* \* \*

Q. Where were these conversations?

A. After the cannery had quit taking the fish, it was both at the dock and Mike's home, and at the union offices, just about every day, and any place in that area, in San Pedro.

Q. Do you recall any places in particular?

A. Yes, at the cannery, Mike's home. [138]

\* \* \* \* \*

(Testimony of Nicholas Mudry.)

Q. (By Mr. MacKenzie): Do you recall any conversations in which Mr. Calise was mentioned?

A. Oh, yes, he says, Mike told me that he was, we was in trouble with Calise, he was.

\* \* \* \* \*

A. We was getting ready to go fishing again after the full-moon period. Mike called me up and informed me.

Trial Examiner: Called you by phone? [139]

A. By phone, yes. Said that he was in trouble, he couldn't go fishing. The cannery won't take his fish. They informed him that the cannery workers weren't going to work the fish because Calise had declared the boat unfair, that we had to get straightened up with Calise's union; not taking the fish. That they were going to try and go ahead and something to overpass that, bypass that, see, for us to stand by. [140]

\* \* \* \* \*

Q. (By Mr. MacKenzie): My question was, did you go fishing? A. Yes, we did after that.

Q. You brought in a load of fish? A. Yes.

Q. What happened?

A. There was, the cannery would not, the cannery officials and the man at the hoist would not lower the hoist to unload the fish. We could not unload our fish.

Q. Did anyone from the cannery tell you why they wouldn't unload the fish?

A. They says they didn't want, they couldn't take that fish in there because the Seine & Line Union had declared it unfair, and ordered the cannery workers not to touch it. The cannery workers would walk out of



(Testimony of Nicholas Mudry.)

their cannery if they touched that fish. They couldn't unload it until we straightened up. [141]

\* \* \* \* \*

Mr. MacKenzie: I will withdraw the question.

Q. Now, Mr. Mudry, do you recall any conversations after the filing of the suit with Mr. Trama regarding the suit? [145]

\* \* \* \* \*

Q. Do you recall anything more being said?

A. Yes, he says, I asked him why couldn't he join the suit, why couldn't he join the suit, questions that I asked him. Yes. He says, like from, I don't know, this is what he says. He couldn't join the suit join with labor to sue business when he was business man to protect his business and could not join the suit. That he was going, wanted us not to sue, or first he said, we could go ahead and sue, but he wouldn't join us, and his attorney did advise us to save time, advised him that it would be best for us to join Calise's union. This is, Mike was telling me what he said his attorney had told him.

Q. What if anything was said about what Mike Trama would do if the crew didn't sign with Calise? [147]

\* \* \* \* \*

The Witness: Well, what was said there is that we could go back fishing if we join that union, and he also says that he could get the crew to go back and join the Seine & Line Union, they would listen to him one way or the other. I was arguing with him that maybe they couldn't go from one union to another, the men wouldn't,

(Testimony of Nicholas Mudry.)

but he says that he would take care of the men, that they would do as he says. He was telling me to join, to go join the other union, the rest of the crew would, too. [148]

Q. Mr. Mudry, do you recall any other conversations occurring after the crew sued Mr. Trama, the cannery and Seine & Line in which the Seine & Line or the suit was mentioned? A. Yes.

Q. When were these?

A. Well, there was one occasion I recall it was possibly, oh, week and a half after Mike had told me he wasn't going through with his suit. He did—

Q. Where was it?

A. This was out in the street, just across the street from the ILWU Union office.

Q. Now, who was present?

A. There was Mike Trama, and Vince Bulone, Frank, Sal Lucca, Tony Affidi, and Rosario Rizza, all the crew was there. He had called us all there.

Q. Who called you all there?

A. Mike Trama.

Q. All right. Now, what was said?

A. He says that, couldn't go, his discussion for us to go fishing, by joining back to Calise, dropping the suits, continuation of that. This time he had a piece of paper, he says where it was a letter to our attorney that we wished to inform our attorney that we wanted to drop the [149] suit against John Calise and Seine & Line Union, and that we wanted, that was a letter there, we was asking him how could we join his union, what we had to do. He had this letter.

(Testimony of Nicholas Mudry.)

Q. Excuse me, Mr. Mudry, he was asking us, who was asking what?

A. That is Mike Trama, we was asking Mike Trama what we could do to go fishing. He was telling us what to do, Mike Trama was telling us what to do.

Q. All right. Now, what was said?

A. He had this piece of paper, it was a letter to Mr. Margolis. It was going to be a letter to Mr. Margolis stating that we the undersigned wish to have you drop this suit, words along that extent and meaning, and to drop the suit against Seine & Line, John Calise and Seine & Line, cannery officials.

Q. What else was said, if anything?

A. And for us to go down join Calise's union. And he did say that the crew was going to be fined \$300. I wouldn't, I was never a member of that union. But instead of the \$300, Calise would take 30 tons of fish that we'd deliver to the fresh fish market, and instead of us getting paid for that fish, we deliver it to the fresh fish market, we turn that fish over to John Calise.

Q. What did the crew say to all this, if anything?  
[150]

A. The crew was definitely very much opposed to it.

Q. Who, which one?

A. I think it was Vince, Tony, Sal and the other men, they would not go for this, they was—

Q. Proceed. I didn't mean to interrupt you.

A. They was very definitely against turning this fish and joining Calise's union.

Q. Do you recall any other conversations with Mr.

(Testimony of Nicholas Mudry.)

Trama after the suit in which Seine & Line or the suit was mentioned?      A. Yes, I do.

Q. When was it?

A. It was again maybe about a week after this where we seen him on the street. He had this piece of paper. We seen him daily. I do recall another point, another day.

Q. Who was present at that time?

A. All the crew was there. We was, we were removing a net off the boat to dry the net out in the field. At that time Mike brought up the subject again, if we wasn't going to join Calise's union that we couldn't go fishing. What else did we want to do. He says, there is nothing that we could do to go fishing only join Calise's union. If we don't join Calise's union we couldn't go fishing. And he says, I could take you any place you want to, we [151] can go up to the judge. We told him to get an attorney. He says, I will take you up to the judge. We says, okay, we will go up to the district attorney, which we did go up to the district attorney in San Pedro and complained to him, complained to him, and he said, we brought up the subject that we had to belong to the Calise's union, what else could we do. I do recall that time there he wanted us to join the union.

Q. Do you recall any other conversations with Mr. Trama about this time where the suit or Seine & Line was mentioned?

A. Yes, it was getting fuel one time at the fuel dock, he was complaining to the attendant at the dock that we won't do what he wants to do, the crew would not let him go fishing because they wouldn't join the Seine & Line union with Calise.

(Testimony of Nicholas Mudry.)

Q. Mr. Mudry, do you recall any conversations with Mr. Trama about Seine & Line and the suit about Armistice Day about of 1957?

A. It was just previous to that time Mike again had us down in the boat.

Q. You do recall a conversation? A. Yes.

Q. When was it?

A. It was the next time was just about, I think it was [152] a Saturday before Armistice Day.

Q. Where was it?

A. This was down at the boat again.

Q. Who was present?

A. All the crew were there.

Q. All of the crew?

A. That is, Vince, Frank Sal, Tony, myself and Rosario, all the crew.

Q. Was Mike there?

A. Mike was there, yes, he called us, he called us down.

Q. Very well. What was said?

A. Well, like he wanted to know what our objections were to joining Calise's union. He says he could—our objections was that we would not trust him. He says, started to say something, now it slipped my mind, like he did start to say what our objections were to joining Calise's union. We told him that we couldn't trust Calise, he demanded this \$300 fine, the fish that we had sold, the fish that we had sold. The next thing, we don't know what he would, what he would demand, what more he would demand, so, we couldn't, that was our objections why we wouldn't go to Calise's union.

(Testimony of Nicholas Mudry.)

Well, he says, he has made arrangements to assure us that Calise is honest, that he would allow us to be members in that union, that no harm would come to us, that we could still [153] fish. He had made arrangements for Sam Di Lucca, a fresh fish buyer at San Pedro to act as an intermediary, I believe it was, and the union would bring over some kind of a guarantee that we would not be discriminated against, and we would join the union. He had the union, one of the union officials brought this bunch of papers over to Sam Di Lucca, and we was going to go to Sam Di Lucca's home to make arrangements, guarantee that we would not be discriminated against by the Seine & Line Union.

Q. So, what happened?

A. After dickering around, back and forth waiting most of the day, the men didn't like the idea. I was willing to go up to see what they had to offer. It was getting late. I told Mike that as far as I was concerned I am not interested in joining Calise's union. He was at the Court by his own members, I just had no use for it. And I would not join his union. I didn't want to no matter what Sam Di Lucca had for us, or what it was. I says just it wasn't, didn't make sense to me.

Q. What did Mr. Trama say, if anything, in this conversation?

A. Well, he got very, well, angry about it, got up on the top of the deck, he says, I am talking to you like a father, to the whole crew, they was back. And he says, I am talking to you like a father. I know what is best for you. The only way you will go fishing or ever go fishing [154] you have got to join Calise's un-

(Testimony of Nicholas Mudry.)

ion. If you don't, I am going to tie up the boat and go fishing, and fire you at the end of the year anyway. So I can go fishing with my brother, the season's gone, we will be finished. That was the meaning of that, not exact words. That was the day before Armistice, or two days before Armistice Day.

Q. Did you, did the Sandy Boy go out to sea after that?

A. Yes, this was on a Saturday, and I am quite positive it was a Saturday, might be off a day or two. The day or two after that he called us again and said we were going fishing, got an order from fresh fish market for mackerel. We did go out.

Trial Examiner: I think you have answered the question.

The Witness: We did go out.

Q. (By Mr. MacKenzie): Did you have any discussions with Mr. Trama while you were on that trip concerning the Seine & Line or the suit?

A. Yes, on that trip there he did say as long as you guys won't join the union right now, I don't have the right to fire you. Comes the end, I am going to make it miserable for you from now on till the end of the season, either going to make it so miserable you will quit now. I am going to fire you later on anyhow. That is what he did say. We did go fishing, and even his grocery bill was [155] padded, took stocks out for—

Trial Examiner: Well now, you are telling us what he did or what he said?

The Witness: What he said and did.

Q. (By Mr. MacKenzie): The question was, what was said?

(Testimony of Nicholas Mudry.)

A. He did say he was going to make it miserable. He said he was going to take us out, he was going to make it miserable, take us out fishing so we could fish. If we didn't quit, he was going to fire us at the end of the season anyway.

Q. Do you recall that some time in December the cannery got an injunction?           A. Yes, I do.

Q. The cannery got an injunction?

A. Yes, I do.

Q. All right. Do you recall any conversations about that time about Mr. Trama?

A. Yes, he called me up on the phone. He was very much enthused. He was in a good mood, very happy, and he says something good may come out after we will go fishing. He says, the cannery is working on an injunction, if they get the injunction everything will be fine, we maybe can go fishing again. He says for me to stand by. And this might have been on a Friday or Saturday, for me to stand by. He was waiting for word from Joe Mardecich or [156] Andy Mardecich, either one of them to give him the go ahead signal, for me to stand by, that we might go fishing tomorrow night.

Q. What did you say, if anything?

A. I said, well, that is fine, it is very good, glad to hear it. I told Mike though that I just located a job that same day, so I didn't want any more running around back and forth to the boat. If there was fishing, I would be glad to come with him, but if there ain't I will be fishing with him Sunday night, notify me if the injunction went through to be positive that we would go fishing, not off and on like we had



(Testimony of Nicholas Mudry.)

been. Mike said, he asked me to stand by, he will notify me. Then, that is the last I ever heard from him till after I received the letter notifying me that I would, that I had quit, and was no longer employed by him.

Q. (By Mr. MacKenzie): Mr. Mudry, I will show you General Counsel's Exhibit 9(B) and ask you if you recognize that?

A. Yes, I do recognize this.

Q. What is it? A. This is a letter.

Trial Examiner: Well, did he receive it?

The Witness: It is a letter I received in the mail from Mike.

Q. (By Mr. MacKenzie): That is the letter to which you [157] referred?

A. Yes, after Mike had told me to stand by, I was already working, went to work because I didn't hear from him Sunday night. There was no promises going to go fishing, so I went to work. This is the next thing I heard about the fishing.

Q. Now, after the end of the sardine season, do you recall any conversations with Mr. Trama wherein the suit or Seine & Line was mentioned. A. Yes.

Q. Yes. Where was that?

A. I went down to the dock where he kept his boat, and I seen him down there.

Q. When was that?

A. It had been two or three days within that time after I received this letter.

Q. Who else was there?

A. I don't think there was anybody there but Mike, as I recall.

Q. What was said?

(Testimony of Nicholas Mudry.)

A. Well, I asked him about this letter, and, well, he explained to me that the injunction, that they did go fishing. The injunction was only temporary, and that if the injunction didn't go through, and we do not want to become members of the Seine & Line Union, that the boat would be [158] tied up again. He told me he fired the whole crew and me too. [159]

\* \* \* \* \*

Q. In speaking to Mr. Trama, does he speak English?

Trial Examiner: Which Mr. Trama is this?

Mr. Miller: I am speaking of Santo Trama now, I am sorry. The Witness: He does speak English, but you wouldn't say it is very good, it is a broken English.

Q. And probably his native tongue is Italian?

A. His native tongue is Italian.

Q. You don't understand Italian, do you?

A. No.

Q. Do you speak Italian?                   A. No.

Q. Do you understand French?           A. No.

[164]

\* \* \* \* \*

Q. Well, while you were building this boat they assisted you sometimes, didn't they?

A. Yes, they did, yes.

Q. Was it necessary for you to have an interpreter to tell them what to do?

A. Oh, on some jobs I imagine it would have been necessary.

Q. Well, you couldn't really understand, you couldn't carry on a conversation at that time?

(Testimony of Nicholas Mudry.)

A. Not with all of them, say some of them. I couldn't carry a conversation with some of them, others I could.

Q. Now, on various occasions while they were there at the boat, would Mr. Mike Trama tell them what to do? A. Yes, yes.

Q. When he spoke to them and told them what to do, he would speak to them in Italian, wouldn't he?

A. Most of the time, yes, unless there was an American part of the machinery, he named the American—

Q. He would use the American name for the machinery, but the rest of the conversation—

A. Yes, I imagine it would be.

Q. —was in Italian? [166]

A. I imagine it would be, yes. [167]

\* \* \* \* \*

You had a conversation concerning the length of time you were to work as a fisherman aboard the boat Sandy Boy, is that correct?

A. There was a length of time might say involved in it.

Q. With whom did you have that conversation?

A. Both Mike and Santo Trama.

Q. Where did it take place? A. At their home.

Q. About when was that?

A. That was the day that we, that I came down when he first hired me.

Q. What did you say, and what did Mr. Santo Trama say, [170] and what did Mr. Mike Trama say, as best you can recall, concerning only your course of employment?

(Testimony of Nicholas Mudry.)

Mr. Margolis: As a fisherman.

Q. (By Mr. Miller): As a fisherman?

A. Well, for me to install this motor and machinery on week ends, and become a crew member on the boat as an engineer; he wanted me to be the engineer on the boat.

Q. I will have to stop you, I am sorry to do that, but I have asked you what did each party say, you are giving us a summary. If you can recall, I would like to know what Mr. Mike Trama said, what his father said, and what you said?

A. Santo Trama say, start off with him, he says, he asked me if I would install the motor and the machinery in this new boat that him and Mike was building and in return I could be a crew member as a fisherman on the boat.

Q. Who said anything about as long as you wanted to be a member of the crew? A. Who said that?

Q. Yes?

A. I believe I says that Santo Trama—

Q. Santo Trama? A. Santo Trama.

Q. That you could be a member just as long as you wanted to be? A. Yes. [171]

\* \* \* \* \*

Q. As a result of the work and effort that you put in on the boat Sandy Boy or installing the motor and doing this work, you later instituted a lawsuit against Mr. Mike Trama and Santo Trama claiming that you were under paid? [173]

A. That is correct, yes.

Q. In that lawsuit in addition to you there were

(Testimony of Nicholas Mudry.)

Vincent Bulone, Sal Lucca, Tony Affidi and Rosario Rizza, isn't that correct?      A. That is correct.

Q. You claimed that there was due to you the sum of \$1,589.66?

\* \* \* \* \*

Q. (By Mr. Miller): As a result of this lawsuit, Mr. Mike Trama and Santo Trama were victorious, you recovered nothing by reason of this lawsuit?

A. Yes, that is correct.

Mr. Miller: Now, for the purpose of the record, Your Honor, I think I should indicate the number of the case. This is the case of Vincent Bulone and others in the Municipal Court of the City of Long Beach, County of Los Angeles, State of California, designated by the number 104 526. [174]

\* \* \* \* \*

Q. (By Mr. Miller): Mr. Murdy, you went with Mr. Mike Trama to the AF of L Union when he had the contract from Franco-Italian Packing Company to fish, did you not?      A. Yes, I did. [177]

\* \* \* \* \*

Q. You went to Mr. Calise's office with Mr. Trama on one or more occasions?

A. It was definitely one, could be two, possibly more; definitely one.

Q. The one that you recall is when Mr. Trama had the contract and he wanted to go fishing and Mr. Calise walked away from him, is that right?

A. Yes.

\* \* \* \* \*

(Testimony of Nicholas Mudry.)

Q. It was shortly thereafter that you went to see Mr. Royal? [179]

A. It could even have been the same day, yes, shortly after. I think we seen him before, too, before he went to Mr. Calise, and after.

\* \* \* \* \*

Q. Well, when you talked to Mr. Royal or Mr. Columbic at one time or another, was there a conversation to the essence that if you had a written contract they would consider whether or not the Local 33 could let you go fishing?

A. What contract are you talking about, this written contract?

Q. I am talking about the contract of Mr. Trama and Mr. Mardecich setting the prices of fish, was there such a conversation with Mr. Royal or Mr. Columbic that if you had a written offer that they would consider it? A. Yes, yes. [180]

Q. And it was the basis of that conversation that Mr. Trama went to Joe Mardecich and obtained this contract?

A. I would say that was it, yes.

\* \* \* \* \*

Q. (By Mr. Miller): We can say that after you had talked to Mr. Calise trying to exhibit to him this contract, you then went to Mr. Royal or Mr. Columbic?

A. That is correct.

Q. Was it Mr. Royal or Mr. Columbic, or both of them that you talked to? A. Both of them.

Q. They told you that if they represented the majority of the crew they would sign a contract and per-

(Testimony of Nicholas Mudry.)

mit you to go fishing upon the terms expressed in the contract with Mr. Mardecich, is that right?

A. The words to that effect, the same meaning, that we could, about the words to the same effect. [181]

\* \* \* \* \*

Q. Well, just think back, wasn't it before you left the office when you were talking to him about this contract, and there was a conversation that you could go fishing if they represented a majority of the crew, before you left the office you made application to join that union, didn't you?      A. That is correct.

\* \* \* \* \*

Q. How soon after that did you talk to the crew about what union they were a member of?

A. I would say almost immediately, to give them the story, you know, immediately, that was my next concern.

Q. That is right, you went down and you talked to the crew, didn't you?      A. Yes. [182]

\* \* \* \* \*

Q. Well, at that time did these men go with you back to the ILWU Union?

A. Oh, it is hard to say, hard to say whether they went right after that; it is hard to say, don't recall.

Q. Did you take any of them back with you?

A. At different times, I did.

Q. They went with you?      A. Yes.

Q. Anyone other than yourself go with them, to your knowledge?

A. Oh, it could have been, yes.

(Testimony of Nicholas Mudry.)

Q. Was Mr. Mike Trama with them at any time that they went to the union?

A. I would say he was, yes, at times.

Q. Were all of them?

A. All of them, maybe one of them, two of them at different times when we was there maybe ten times together in and out, 15 times. [184]

Q. What did he do, drive the car?

A. No, I think he done more than drive the car.  
[185]

\* \* \* \* \*

Q. You went fishing the first time on September 27, didn't you?      A. I believe that is the date.

Q. That is the same day that the contract was signed.      A. I don't recall if it was the same day.

Q. Now, you fished four or five days and caught fish, is that correct?      A. That is correct. [189]

Q. And delivered all the fish to the Franco-Italian Packing Company on Terminal Island?

A. That is correct.

Q. The first day that you delivered fish there were some men walking up and down the dock claiming to be pickets for the AF of L, weren't there?

A. Yes.

Q. That fish was delivered, and the fish that you caught in the subsequent four days was delivered to the cannery.      A. That is right.

Q. Now, the next time you delivered, attempted to deliver fish to that cannery there weren't any pickets there, were there?      A. No, there wasn't.



(Testimony of Nicholas Mudry.)

Q. But the cannery workers wouldn't unload the fish?  
A. Somebody wouldn't unload it.

Q. The fish stayed on the boat?

A. That is correct.

Q. And the fish stayed on the boat until the time that the fish and game came to the boat, didn't they?

A. That is correct.

Q. They were going to do something?

A. I don't know.

Q. Subsequently, very shortly thereafter the fish was delivered to the fish market in San Pedro, wasn't it?

A. That is right. [190]

\* \* \* \* \*

Mr. MacKenzie: I know nothing of the conversations.

Trial Examiner: We will note the stipulation.

Q. (By Mr. Miller): Now, at the time that the lawsuit was filed, Mr. Mudry, did you know who was going to be defendants in that lawsuit?  
A. Yes.

Q. You knew that Mr. Trama was going to be a defendant?  
A. Yes.

Q. Did you so advise him?  
A. I think he knew it too.

Trial Examiner: The question is, did you tell him?

The Witness: No, I did not advise him.

Q. (By Mr. Miller): Now, this lawsuit was filed, Mr. Mudry, I believe, on the 20th day of October of 1957; it is [194] 28th, I am sorry, the 28th day of October. Now, you say that about a week after the lawsuit was filed that you had a conversation with Mr.

(Testimony of Nicholas Mudry.)

Trama across the street from the Union office?

A. That is right.

Q. You are not quite sure of that time, are you, that it was a week later, it could have been longer than a week?

A. It could have been a little bit longer. It could be a little bit shorter. It was after the suit was filed.  
[195]

\* \* \* \* \*

Q. Across the street from the Union Hall about a week after the lawsuit involved against the Union had been filed, he had a conversation with these men telling them what the Union—strike that, instead of saying Union, what the Seine & Line demanded to permit the boat to go fishing, is that right? A. That is right.

Q. In effect he said to them, I have talked to Mr. Calise, probably he said I have talked to John, didn't he? A. Yes.

Q. And John said if we do this and this and this, he will permit us to go fishing, isn't that right?

A. It would be about that line, yes.

Q. And then there was a general conversation with all the men as to whether or not they wanted to do that, meet those demands of the Seine & Line Fishermen's Union? A. There would be that, yes.

Q. And as a result of that conversation the result was that the men said, we won't do that?

A. That is right. [197]

\* \* \* \* \*

Q. At that time when you were removing the net, Mr. Trama [198] told you that he didn't think that

(Testimony of Nicholas Mudry.)

this lawsuit that you had filed, that had been filed would get the boat to go fishing?

A. I don't recall if he said that the lawsuit would get the boat to go fishing.

Q. Well, he said that it would not get the boat to go fishing, didn't he?

A. He said there was a—there was nothing good, at different times he did say we would get nothing out of the lawsuit, for us to, there was other conversations for us to join Calise's Union; he told us what to do.

Q. Didn't he say to you, I will take you anywhere you want to go and they will tell you that there is nothing that we can do?

A. No, he didn't say that they will tell us that there is nothing that we can do, he say—he said, I will take you any place you want to go, but he didn't say that they will tell us that there is nothing that we can do.

Q. Did he tell you that he had gone to consult with persons in the National Labor Relations Board?

A. Not at that time he didn't tell me that, no, but I think he did though, consult the National Labor Relations Board. [199]

\* \* \* \* \*

A. I said this would be a Saturday, the day before Armistice day, I am quite positive it is Armistice Day, the Saturday before Armistice Day I am talking about, this Saturday which could be the 9th, Mike called us down to the boat, and previous to that we had told him that we couldn't go back to Calise's Union as he wanted us to because we couldn't trust him. So he had made arrangements with John Calise that would prove that we would not be discriminated against by John

(Testimony of Nicholas Mudry.)

Calise's Union. That we could go back and join his Union. That was this Saturday morning. We was [202] there.

Q. That is when you said that Mike Trama said he had made arrangements with an intermediary to work with Mr. Calise? A. That is right.

Q. To keep him honest?

A. That is correct, it could be about that.

Q. Yes. And you and the members of the crew still did not think that you should do that because you didn't trust Mr. Calise, is that right?

A. I think at that time, I imagine I didn't trust Mr. Calise. I myself personally didn't want nothing to do with the man. I didn't want to join his Union. I wasn't interested.

\* \* \* \* \*

Q. Was it at this time that Mike told the crew members that he was acting like their father?

A. Yes.

Q. Was that on the boat?

A. That was on the boat, yes.

Q. Mike was excited then, wasn't he, he said—  
[203]

A. He was, yes, he was excited.

Q. Did he jump up on the boat to speak to the men?

A. Well, to the essence of that, yes. I think he was up on the topside bridge there.

Q. Was he speaking to you or the crew members at that time?

A. To all the crew members. It was a conversa-

(Testimony of Nicholas Mudry.)

tion for about an hour, both in the galley and on the deck and on the roof.

Q. Tell me, Mr. Mudry, when Mr. Trama speaks to the crew, or spoke to the crew on this particular occasion, did he speak in English or in Italian?

A. Both, both English and Italian.

Q. You could understand the English, but you couldn't understand the Italian?

A. That is right, I wouldn't understand Italian.

Q. When he spoke in English, that is what you have related to us?

A. That is correct.

Q. Did he say in English, if you don't do what I tell you, I will fire you?

A. He says in English definitely, that he was speaking, he knew what was best for us, that we had to join that Union. He was talking to us like a father. And he would fire us definitely. That is what I asked him for my back pay. [204]

Q. Mr. Mudry, at this time—just a moment. At this time I am interested in what he said to the crew in English. [205]

A. In English?

Q. That you understood?

A. I am part of the crew, and he was talking to me in English. He says, I am talking to you like a father. I know what is best for you, and how we are going to go fishing. There was quite a few things with it, if we don't do that, that at the end of the year he was going to fire us.

Q. When you say that, is that what he said to you?

A. That is what he talked to the crew and me.

(Testimony of Nicholas Mudry.)

Q. And that was in English?

A. That was in English.

Q. Did he tell you to tell that to the crew?

A. No.

\* \* \* \* \*

Q. (By Mr. Miller): Mr. Mudry, after this conversation when Mike said he was going to talk to you like a father, you received a call to go out and go fishing again?

A. Yes, we did go fishing that Sunday night.

[206]

\* \* \* \* \*

Q. It was during this trip that there was a conversation about getting squared away with the AFL-CIO Union?

A. There was on this trip, yes.

Q. Was it just once during the evening, or was it continuous conversation during the evening?

A. It wasn't continuous, just two or three times, that is about the most during the whole trip, not the evening. The trip includes that evening, night and morning; the following day during the trip, yes.

Q. About a period of eight or ten hours? [208]

A. It was more than that.

Q. Where would the conversations take place?

A. On the boat. I imagine it would be in the galley.

Q. While the boat was under way                      A. Yes.

Q. So that at best, one man of the crew wouldn't have been present during this conversation?

A. Definitely, one man would be at the wheel if it was under way.

(Testimony of Nicholas Mudry.)

Q. Yes. What, if anything, did Mike tell you concerning the AFL-CIO Union?

A. Oh, at one time during the trip or after we had come in he said he wasn't interested in catching fish, just wants to make it miserable for us to quit fishing because we wouldn't join the AF of L Union. [209]

\* \* \* \* \*

Q. As a matter of fact, Mr. Mudry, when you left the boat that day, you didn't intend to come back did you?

A. Oh, definitely I did, yes. Any time Mike would call me I would come back

Q. You obtained employment some place else, didn't you?

A. Yes. Not immediately after, between then and now, yes; I did, yes. I did get employment.

Q. Do you recall when you went to work?

A. Yes.

Q. For somebody other than Mr. Trama?

A. Yes.

Q. When was that?

A. I am quite sure it was December 16th.

Q. December 16th? A. December 16th.

Q. In what capacity did you go to work?

A. I went back as a machinist.

Q. For whom?

A. It was an aircraft company here in town. [211]

Q. What is the name of the company?

A. I would not like to say.

Q. Are you still with the same company?

A. I am.

(Testimony of Nicholas Mudry.)

Q. When you took this job, Mr. Mudry, was it on an hourly basis?      A. Yes.

Q. Do you know of anything that Mr. Trama did on that boat to make it miserable for anyone?

A. What he did do?

Q. Yes?      A. From what he generally does do?

Q. Yes?

A. Yes. I might say, make it miserable from his general procedure, that he would go out on a night like this. First of all we did pass school after school of fish going down south. He put on enough groceries for maybe four or five days, six days of groceries. Said he wasn't going to come back to port, plus he padded the grocery bill. Actually the bill was only \$25 of groceries, he had a bill that was \$50. We asked him about that. He admitted it wasn't correct, said he would take care of it. That was the first time he took groceries of that type in all the seasons. He didn't take that kind of groceries. He told us—or tried to give us the impression that he was going to San Diego and fish down there. [212]

Q. This all occurred after he told you that he was going to make it miserable for you?      A. Yes.

Q. You didn't go fishing with him after that time, did you?

A. Oh, yes, after he told us he would make it miserable, yes, this is the time we went. He told us the day before he was going to make it miserable so we would quit.

Q. Mr. Mudry, it is my understanding that the last time you were on the boat when you caught fish, that is when he told you that from then on he was going to make it miserable for you?



(Testimony of Nicholas Mudry.)

A. No, I don't think that would be correct. That I said?

Q. That is what you just told me.

Mr. Margolis: Object on the ground it is argumentative.

Trial Examiner: Sustained.

Q. (By Mr. Miller): Now, Mr. Mudry, on your employment on the boat, did you have the right to quit at any time? A. Yes.

Mr. Margolis: Just a moment. Object on the ground that calls for the legal conclusion and opinion of the witness.

Trial Examiner: It does. I suppose all we are interested in is his frame of mind in that respect.

Mr. Miller: Then I will—

Trial Examiner: I will sustain the objection.

Q. (By Mr. Miller): Do you think you had the right to quit [213] at any time?

Mr. Margolis: Object on the ground it is immaterial.

Trial Examiner: I will overrule the objection. You may answer.

The Witness: Yes, I can quit any time, it is a free country, I am not a slave. [214]

\* \* \* \* \*

Q. (By Mr. MacKenzie): Mr. Mudry, do you recall when it was that you and the crew sued Mr. Trama for moneys you felt you had earned building the Sandy Boy? A. When did we sue?

Q. Yes.

A. I myself personally?

(Testimony of Nicholas Mudry.)

Mr. Margolis: Maybe we could stipulate as to the date, that would be more accurate.

Mr. Miller: April 1, 1958 is the date on the summons that I have.

Mr. MacKenzie: That is what I am interested in.

Mr. Margolis: Yes, that is correct, the correct date.

Trial Examiner: You are all satisfied. Well, let the record show that. [215]

\* \* \* \* \*

#### ANTONE AFFIDI

was called as a witness on behalf of the General Counsel, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

\* \* \* \* \*

Q. Were you ever employed by Mr. Mike Trama on his boat the Fisherman? A. Yes.

Q. Do you recall about when you went to work on the Fisherman?

A. Yes, some time in June '57, 1957.

Q. While you were on,—

When did you first go to work for Mr. Trama on the Fisherman? Did you work for Mr. Trama on the Fisherman another time before 1957?

A. I don't remember. I guess I was. I don't remember whether I was with him.

Q. All right. Now, when did you first work on the Fisherman? A. Some time in June '57. [216]

Q. Now, while you were on the Fisherman were you a member of any union? A. Yes.

Q. What union?

(Testimony of Antoine Affidi.)

A. AF of L, Seine & Line, I mean.

Q. Now, did you work on the Sandy Boy?

A. Yes.

Q. Mr. Affidi, how long did you work on the Sandy Boy?      A. Oh, for three months.

Q. This was before it went fishing?      A. Yes.

Q. How much did you work on the Sandy Boy, how much, how many days?

A. Oh, how many days? Two, three days a week, four days a week.

Q. This was before it went fishing?      A. Yes.

Q. Do you recall about how many hours a day you worked?      A. Four or five hours a day.

Q. What did you do on the Sandy Boy before it went fishing?

A. Oh, I went to the boat, I cut the line with the hammer, I gave up with the ladder.

Q. The ladder to what?      A. To the boom.

Q. What else? [217]

A. I painted the fishing hold. I help Nick for that tank, the tank fuel, fuel tank, I mean.

Q. Anything else?

A. Oh, you see, he has got some needle, it has got a hole and the needle has got a little hole, he puts some plugs on top of the needles. I do a lot of work. I help a lot of times, lot of things.

Q. Do you recall doing anything else in particular?

A. Cut the line, all the time the boat got a line with a hammer, he cut the boat.

Q. Now, why did you do all this work, Mr. Affidi?

\* \* \* \* \*

(Testimony of Antoine Affidi.)

Why did you do the work?

The Witness: Because he promised me a job on the Sandy Boy.

Q. (By Mr. MacKenzie): Who is he?

A. Mike Trama.

Q. Will you tell us whether or not Mike said how long you would be? [218]

\* \* \* \* \*

Q. Mr. Affidi, what if anything did Mr. Trama say about how long you would be on the boat?

A. No.

Q. By no do you mean he didn't say anything, or what?

A. He didn't say anything for as long as I stay on the boat, you can stay ten years if you want on the boat, be top man, you can stay all your life.

Q. Did he say that? A. No.

Q. He didn't say anything? A. Anything.

Q. Do you recall, Mr. Affidi, when the Sandy Boy first fished? A. Yes.

Q. Now, before or after the Sandy Boy fished, did Mr. Trama say anything to you about Local 33?

A. No, after fishing two, three days he told me you have got to join the other union.

Q. What union? A. Local 33. [219]

Q. Where did he tell you that?

A. After two, three days of fishing.

Q. Where?

A. Oh, in front of the union, he told me this in a coffee shop. He told me one time my house, too, and on the boat.

(Testimony of Antoine Affidi.)

Q. Did you fish with the Sandy Boy the first day?

A. No, I don't fish on the Sandy Boy the first day because he has got too many picket line, I am afraid to go fishing the first day.

Q. When did you first fish?

A. Second day I go fishing with him.

Q. Mr. Affidi, do you remember that the crew sued Mr. Trama and the cannery?

A. Yes, I remember.

Q. Now, after the crew sued Mr. Trama and the cannery, did Mr. Trama say anything to you about Seine & Line Union, or the suit?

A. Yes, he said—

Q. Just yes or no?           A. Yes.

Q. Where did he say this to you?

A. In the front of the union.

Q. What union?           A. Local 33.

Q. Anywhere else? [220]

A. Yes, he says in coffee shop and the boat most of the time, and my house.

Q. You had several conversations?           A. Yes.

Q. Do you recall any particular conversation?

A. Yes, in the coffee shop across the street.

Q. Who was there?

A. All the crew, me, Nick, Farra, Bulone, Sal Lucca.

Q. Now, what did Mr. Trama say?

A. He says, you want to go fishing you got to change union, go the Seine & Line pay \$300 and some fish. [221]

\* \* \* \* \*

(Testimony of Antoine Affidi.)

A. Oh, he said drop, lot of time, drop the suit; lots of times.

Q. Now, did you leave the United States during fall—

A. Yes.

Q. —of 1957?

A. Yes, I leave the United States the 3rd of December.

Q. Where did you go? A. Algiers.

Trial Examiner: In France?

The Witness: Yes, in France.

Trial Examiner: Yes. [222]

Q. (By Mr. MacKenzie): Why did you go, Mr. Affidi?

Mr. Miller: Your Honor, I am going to object to that, certainly it would be immaterial here why he went.

Trial Examiner: I will overrule the objection. You may answer.

The Witness: Yes. I go Algiers because I know that—you see, I no got any more job. I go marry my daughter.

Trial Examiner: What is the last part of that answer?

(Record read.)

Trial Examiner: I guess we can understand that to mean his daughter's wedding. [223]

\* \* \* \* \*

Q. All right. Now, when did these—when did this talk that you had with Mr. Trama in which he said that if you don't join the Union, the Seine & Line Union or pay the \$300 fine, and give them some fish you

(Testimony of Antoine Affidi.)

would be fired, you can pick up your clothes?

A. Yes. When?

Q. When was that?

A. After one week of fishing with the Sandy Boy.

Q. Well, was it before you went to French Algiers?

A. Oh, yes, before. [224]

Q. About how long before?

A. Long, I go Algiers three December, this will be supposed to be in October, something like that. I don't remember exactly.

Q. Was it your understanding that you were fired? Did you think you were fired?

A. Fired? What do you mean?

Q. That you no longer had a job?

A. Yes, that is right. [225]

\* \* \* \* \*

Q. You remember we were in court in Long Beach?

A. Yes.

Q. You claimed in that lawsuit that Mr. Trama owed you money, didn't you? A. Yes.

Q. In fact, you claimed that he owed you the sum of \$1,820? A. What do you say?

Mr. Margolis: I will stipulate to that.

The Witness: Give me one thousand?

Mr. Margolis: We can save some time if you want to read in for each of the men here the amount of the prayer, I will stipulate that that was the prayer in the Complaint.

Mr. Miller: Yes. For Mr. Bulone, Mr. Luca and Mr. Affidi it was \$1,820. For Mr. Rizza, \$2,474, and I have already read the amount for Mr. Mudry which is \$1,589.66.

(Testimony of Antoine Affidi.)

Trial Examiner: All right.

Mr. Margolis: I so stipulate.

Trial Examiner: Very well.

Mr. Miller: I imagine we can further stipulate that on December 8th Judgment was rendered in favor of the defendants.

Mr. Margolis: Without stipulating as to its materiality, I don't think it is material here. I agree that that is the fact. [230]

Trial Examiner: All right.

Q. (By Mr. Miller): Now, Mr. Affidi, after you had fished for three or four days—

A. Yes.

Q. —you say that Mr. Mike Trama told you that you would have to join the AFL Union? A. Yes.

Q. As a matter of fact—

Mr. Margolis: I think you misspoke yourself.

Q. (By Mr. Miller): Local 33, he told you you would have to join Local 33? A. Yes.

Q. Now, Mr. Affidi, at that time didn't he tell you that he had a contract with Local 33?

A. I don't know, no see the contract. He told me to join other Union, that is all.

Q. He said that you would have to be—you would have to join that Union to be a member of the crew, didn't he? A. Yes, that is right.

Q. Prior to that he never told you where to go, what Union to join, did he, before that conversation?

A. Yes, yes.

Q. He never had any conversation with you telling you that you had to join the Union, did he?

A. Yes. [231]



(Testimony of Antoine Affidi.)

Q. Now, at a later time in the coffee shop there was a conversation about the other Union, which is John Calise's Union, is that right? A. That is right.  
[232]

\* \* \* \* \*

Q. Yes. Now, this conversation about your joining the other Union, going back to your first Union, John Calise's Union, did that occur after those two trips to the fish market? A. Yes, I guess; yes.  
[233]

\* \* \* \* \*

Q. You are sure, Mr. Affidi, that when Mr. Trama was talking to you and wanted you to join John Calise's Union that he [234] mentioned the lawsuit?

A. Yes. He told me, drop the suit, pay \$300. He wants the fish, too.

Q. Mr. Affidi, didn't he tell you that was what John Calise told him, and he was telling you what Calise had told him?

A. I don't know. Mike Trama told me, I don't know Calise or not, I don't know.

Q. And was it then that you went on the boat and picked up your clothes and left?

A. After this?

Q. Yes? [235]

\* \* \* \* \*

Q. Did you talk to any of the crew men, Mr. Bulone or Mr. Luca, Mr. Rizza, Mr. Ferrara?

A. Yes, I talked to them.

Q. Did they all think they were fired, too?

A. Yes, he told all the crew.

(Testimony of Antoine Affidi.)

Q. Well, did they all agree with you that they didn't have a job any more?

A. Have no job any more?

Q. Did they say that?

A. He say that. [236]

\* \* \* \* \*

Q. Aren't there two seasons?

A. Two seasons.

Q. Yes, what are the seasons of fishing?

A. He has got sardine season for sardine, and season for tuna.

Q. And the sardine season is what, from September 1 to the end of the year?

A. The end of the year, yes.

Q. When you are hired, Mr. Affidi, you are hired for a season, aren't you?

A. I no hired for season. [238]

Q. You take your clothes and leave the boat when you want, in your opinion? A. Oh, yes. [239]

\* \* \* \* \*

#### VINCENT BULONE,

a witness called on behalf of the General Counsel, after having been duly sworn, was examined and testified as follows:

#### Direct Examination

\* \* \* \* \*

Q. When did you start?

A. Started in 1955.

Q. For how long?

(Testimony of Vincenzo Bulone.)

A. Oh, how long—more than five year.

Q. When did you last work for Mr. Trama on the [246] Fisherman?

A. When he go fishing on the Sandy Boy.

Q. Did you belong to a union when you worked on the Fisherman? A. Yes.

Q. What union? A. AF of L.

Q. Did you work on the Sandy Boy before it was launched? A. Yes.

Q. What did you do?

A. Oh, pin the boat, put up masts, put ladder.

Q. The ladder to where?

A. The mast up on top of the mast, clean the boat.

Q. I didn't hear that.

A. I say clean the boat. Pin the boat, put concrete in the boat.

Q. That is ballast?

A. Yes, in the hatch, pin the hatch, put table on the hatch, pin ballast, clean up the pilot house. I operate the winch in the boat.

Q. You put the winch in the boat?

A. I helped. The gear, the gear, you know pull the nets, help with the gear.

Q. How long did you work on the Sandy Boy before it was launched?

A. Oh, three, four months.

Q. How often? [247]

A. Would you repeat that again?

Q. How many days, how many weeks?

A. Oh, I think three, four-day week, three, four-day week.

(Testimony of Vincenzo Bulone.)

Q. How many hours a day?

A. Oh, five, six, seven hours. It depend.

Q. Did anyone else work with you on the Sandy Boy before it was launched? A. Yes.

Q. Who?

A. Toni Affidi, Rosario Rizza, Nick Mudry, Sal Lucca and myself and Frank Ferrara.

Q. Were you paid for working on the boat?

A. No.

Q. Before it was launched?

A. No, pay no.

Q. Why did you work on the boat.

A. Because promised a job.

Q. Who promised? A. Mike Trama.

Trial Examiner: Doing what and where?

Q. (By Mr. MacKenzie): What kind of a job did he promise you? A. Fishing fish. [248]

\* \* \* \* \*

Q. (By Mr. MacKenzie): Did Mr. Trama say anything about how long you would work fishing on the Sandy Boy?

A. No told to me you can stay and use the boat.

Q. What was that?

A. Use it longer you want on the boat, maybe one hundred.

Q. Did he say anything about staying with him for years?

A. No, no. I am good a fisherman, good worker, so long, as I stay on the boat. Nobody chase me. I say nobody told me to get out of the boat, you know. [249]

\* \* \* \* \*

(Testimony of Vincenzo Bulone.)

Q. (By Mr. MacKenzie): Mr. Bulone, after you received that letter, did you talk with Mr. Trama about the Seine & Line Union? A. Yes.

Q. Where did you talk?

A. I talk, I come and see the boat after three, four days. I got a letter home. I say Mr. Mike I want my job back. I said to me I no give job back to me, no more. I say why. I say to me why. I say because the union you come in the boat, the union say you come on the boat to give trouble, the Seine & Line, no. I say all right. I want to go fishing. I say the union give you trouble I take my clothes myself, I go. I say you go because I don't want to give you job no back no more. [254]

\* \* \* \* \*

Q. Do you remember when the boat Sandy Boy first went fishing? A. Yes.

Q. Did you join the CIO Union—not the CIO, I'm sorry.

The John Royal Union, do you know Mr. Royal?

A. Yes. I know Mr. Royal.

Q. That is Local 33? A. Yes.

Q. You joined that union, didn't you?

A. Yes. I joined. I put application in.

Q. An application?

A. Yes, to give me the book because that's a good union, yes. [260]

\* \* \* \* \*

Q. When you went to work on the boat Sandy Boy, there was never any mention how long you were going to work? A. No.

\* \* \* \* \*

(Testimony of Vincenzo Bulone.)

Q. Would you ask him how long am I going to stay on the boat? A. No.

Q. And he would just say to you, Vince, you can stay with me as long as you want? A. Yes.

Q. But you could leave any time you wanted to leave? A. Yes. [262]

\* \* \* \* \*

Q. Where was he then when you talked to him three or four days later?

A. On the boat. I going to talk to Mr. Trama.

Q. Yes.

A. Got new crew on the boat.

Q. You went down to the boat? A. Yes.

Q. Three or four days after you picked up your clothes? A. Yes.

Q. And Mr. Trama was there with some other men?

A. Yes, the new crew.

Q. And that is when you had this conversation with him? A. Yes.

Q. And you said to him, I want my job back, didn't you? A. Yes.

Q. And Mr. Trama said no, you can't have it?

A. Yes.

Q. Was it then that he told you that if you were on the boat that the Seine & Line Union would make trouble for you?

A. If I go on the boat myself and make trouble, if I go on the boat, Mr. Trama said if I go on the boat.

Q. He said first if you are on the boat the Seine & Line will make trouble for me? [265]

A. Yes.

(Testimony of Vincenzo Bulone.)

Q. And you told him if they make trouble for you, I will get off the boat? A. Yes.

Q. Is that right? A. Yes. [266]

\* \* \* \* \*

Q. (By Mr. Miller): Mr. Bulone, when you just testified that Mike told you all these things about why he wouldn't hire you back, is that what he said to you when you came back on the boat to ask for your job back? A. Repeat that again.

Q. When you came back to Mike on the boat and said that you want your job back— A. Yes.

Q. Did he tell you that he didn't want you because you hadn't stopped the lawsuit and you hadn't paid money to the Sein & Line Fishermen's Union?

A. Yes.

Q. Is that what he said to you at that time?

A. Yes. [269]

\* \* \* \* \*

Mr. MacKenzie: Mr. Examiner, at this time I would like to propose a stipulation, that if Mr. Earl W. De Harg were called to testify he would testify under oath that he is office manager and comptroller of Franco-Italian Packing Company, and that he is in charge of the books and records of Franco-Italian and based on an examination of said books and records and to his personal knowledge, Franco-Italian during the period from September 27, 1957 to January 1, 1958 bought fish from Mr. Mike Trama, a total value of \$11,723.50.

During the period from January 1, 1958 to Septem-

(Testimony of Vincenzo Bulone.)

ber 27, 1958, Franco-Italian bought fish from Mike Trama to the total of \$35,155.82, and that in the period from September 27, 1958 to December 31, 1958 Franco-Italian bought fish from Mr. Mike Trama to the value of \$43,362.50.

Mr. Margolis: This is fish from the Sandy Boy?

Mr. MacKenzie: Yes, this is fish caught on the boat Sandy Boy.

Trial Examiner: Do you so stipulate, Mr. Miller?

Mr. Miller: Your Honor, I don't believe that is a complete [270] stipulation. The stipulation is that subject to my right to object to such testimony, I would make that stipulation, but I reserve the right to object to the admission of that testimony.

Mr. MacKenzie: I don't think it is necessary to put that into the stipulation, but if you wish, you are free to do so.

Mr. Miller: I think it is very necessary to do so.

Trial Examiner: Now, you agree to it. You accept the stipulation as fact, but object to its consideration?

Mr. Miller: That is right, sir. If he were here I would object to his testimony.

Trial Examiner: All right. I think that that is clear enough.

Now, you asked that the subject of the stipulation be considered in connection with the assertion of jurisdiction by the Board.

Mr. MacKenzie: That is right.

Trial Examiner: You object.



(Testimony of Vincenzo Bulone.)

Mr. Miller: Yes, sir.

Trial Examiner: On what basis?

Mr. Miller: I object to the admission of any testimony of what the boat did in 1958 as not encompassed within the pleadings as to the alleged unfair labor practices in 1957.

Trial Examiner: Do you further object to any [271] consideration of the 1957 operations of the boat or sales from the boat?

Mr. Miller: No. I think that is within the period.

Trial Examiner: All right.

Mr. Miller: And I wouldn't object to that.

Trial Examiner: All right. I will overrule the objection as for the consideration of the 1958 sales, and the stipulation is received.

\* \* \* \* \*

Mr. Miller: In that case I will still renew the motion that I made at the beginning of this, that inasmuch as the General Counsel has not shown jurisdiction, that this vessel was engaged in commerce in 1957 and even using the \$50,000 figure, using a projected period from September 27, '57 to September 27, '58, the earnings of the boat were [272] still less than \$50,000. I feel that there is no jurisdiction in this Court to proceed with this hearing. [273]

Trial Examiner: Well, I think that there is jurisdiction. I will overrule or I will deny the motion to dismiss on that basis. [274]

\* \* \* \* \*

## MIKE TRAMA

called as a witness by and on behalf of Respondent, having been previously duly sworn, testified further as follows:

Q. Now, Mr. Trama, how old are you?

A. I am 25.

Q. How long have you been in this country?

A. I have been here for about 10 years.

Q. And you were born in Italy, were you not?

A. Yes, I was.

Q. Did you go to school in this country?

A. About three years.

Q. What grades were they, what school? High School?

A. San Pedro Junior High. [285]

Q. How far did you go in high school?

A. Ninth grade.

Q. After ninth grade did you go to work as a fisherman?

A. Yes, I did.

Q. How old were you then?

A. Sixteen.

Q. And you went to work for who?

A. I went to work for my father.

Q. Did he own a boat at that time?

A. No, he didn't.

Q. He was working for someone else?

A. Well, he would charter a boat from somebody else and put his net on it, and he was like running it, like a skipper, I guess.

Q. Were you a member of any Union?

(Testimony of Mike Trama.)

A. Yes, I was. I became a member later on, yes.

Q. Of what Union?

A. Well, I think I was a member of the ILWU.

[286]

\* \* \* \* \*

Q. Did you own any interest in the boat Fisherman?

A. Not at first, no, but I became a partner, I imagine it was 1956 or '57 on the Fisherman.

\* \* \* \* \*

Q. How many men were aboard that vessel fishing?

A. There was five of us.

Q. Who were those five?

A. Over what period? [287]

Q. Let's say in June of 1957?

A. June of '57?

Q. Yes.

A. There was me, this Bulone. I can't remember too much about it. I mean there was so much switching going on where guys would come in for a month or two and somebody else would replace them, and then take off again, and you had to rehire a new crew all around.

Q. You have been acquainted with Mr. Sal Lucca for some time, haven't you?

A. Well, it's been over two years, I think.

Q. And Mr. Ferrara?

A. Mr. Ferrara has been—well, I have known him for a long time. I mean,—

Q. You have known Mr. Ferrara since he came, arrived in this country, have you not?

A. Yes, I do.

(Testimony of Mike Trama.)

Q. Did your family bring him here?

A. Well, we helped bring him here, yes.

Q. And Mr. Rizza, he lived in your home, did he not, or your father's home?

A. Yes, he did.

Q. And sometime during 1957 you started to build the boat Sandy Boy?

A. That is correct. [288]

\* \* \* \* \*

Q. What is the custom and usage as far as hiring a man is concerned?

A. Well, the custom is that you need a man and you ask him to come fishing, and say that it is seasonable. When you do hire a man it is actually for a season as far as I can see it—

Q. At the end of the season—when the end of a season [290] approaches and you say nothing to a man, what is the result of that?

A. If you don't say nothing to him, they take into consideration that they are rehired. It isn't done by means of any letter or anything like that. It is just a verbal say.

\* \* \* \* \*

Q. Did you have a contract for labor aboard the boat Fisherman? By that I mean did you have a contract with any Union concerning the men who worked aboard that vessel?

A. Yes. We had a contract with the AFL Union.

\* \* \* \* \*

Q. The boat Sandy Boy was not ready to go fishing at the beginning of the sardine season in '57, was it?

(Testimony of Mike Trama.)

A. No. The boat was launched on the fourth. I think it was September 4th. [291]

Q. At that time on your crew was Vince Bulone; is that right? A. Yes, sir.

Q. Sal Lucca?

A. That is correct.

Q. Antoine Affidi?

A. Yes, sir.

Q. Rosario Rizza?

A. That is right.

Q. And Frank Ferrara?

A. Well, Frank Ferrara became later employed because we needed another man and we hired him. I mean when I say "we" I mean I hired him.

Q. Now, at any time in 1957 did you have a conversation with Mr. Bulone concerning the length of time that he would stay on the boat?

A. No. It was never discussed, the length. I mean I don't think anybody discussed the length as to how long a man is going to stay on a boat.

Q. Now, Mr. Bulone has said that in effect, you told him he would stay on the boat as long as he wanted to. Did you ever make such a statement to him?

A. I don't recall it.

Q. Now, Mr. Mudry has said that you asked your father in a conversation with him said that he could stay on the boat [292] as long as he wanted to. Did you ever make such a statement to Mr. Mudry?

A. Saying something that we were going to fish all the time, but that does not mean you can stay on the boat as long as he wanted to, because who knows what you are going to do with your boat. From one year

(Testimony of Mike Trama.)

to the other, the whole situation might change where you might sell it, you might do anything. I mean you can't say such promises or give a man such promises as that, no.

Q. Did you make him such a promise?

A. No, sir. [293]

\* \* \* \* \*

Q. Sometime during September of '57 did you get a contract from Franco-Italian Packing Company?

A. Yes, I did.

Q. What, if anything, did you do with that contract?

A. Well, first I got a verbal understanding with the cannery. There were squabbles between the two Unions and they asked me what their demands were, so I went back and forth from both of the two Unions and asked, you know, try to find out what the demands were; and I understand whatever I can gather was that the ILWU was asking \$80 a ton for sardines and \$55 or \$60 for mackerel, whatever it was. I don't recall the exact amount; and the day we went on record that [296] they were demanding or asking \$80 a ton and that the AFL, I think has joined them in asking for the price. I don't know whether that was definite or not.

Q. So what did you do, go back and tell that to the cannery?

A. Yes. After I got my gathering I went back there and told them they were asking \$80 for sardines and asking for mackerel \$55. I said they were asking twenty-seven fifty for anchovies and the minimum of the limit was forty ton per night, and they told me this. They said what if we can meet that demand, can you go fishing. I said I don't know. I will have to take it to the Union and see whether they would agree to it or

(Testimony of Mike Trama.)

not, and when he says, well, we will give you an agreement and see what you can do with it, that's what I did. [297]

Q. Did they give it to you in writing?

A. Yes, they did.

Q. Where did you go with that contract?

A. Well, first I went to see John Calise. The reason I wanted to see John Calise was because during the squabbles the Unions had passed that these men can go to work on any boat removing a boat, removing a net and do anything at all on the boat and so the boat wasn't quite ready. After I got in the water I went to the AFL to ask permission if these men can give me a hand and finish getting the boat ready, and they granted it. They said that they can go ahead and finish for about three days or whatever it was. I don't recall.

Q. You took it to him and he wouldn't talk on it?

A. That's right.

Q. You took the contract to Mr. Calise but you got nowhere with it, is that right?

A. Not at that time, no.

Q. Did you show the contract then to Mr. Royal or Mr. Columbic?

A. Yes, I did.

Q. What, if anything, did they tell you?

A. Well, they asked me, they said, well, what about these men, which Union do they belong to? I said there is a few they told me that they belonged to the AFL, and there was a [298] few that told me they belonged to the ILWU. I said I don't know, and then they asked me if I would bring them in and they wanted to talk to them, and see who the men were and I said yes, I would.

(Testimony of Mike Trama.)

Q. Was Mr. Mudry with you at that conversation?

A. I don't recall whether he was with me the very first time or not.

Q. What did you subsequently do?

A. Would you repeat that?

Q. What did you do after that?

A. Well, I went back and talked to Nick and asked him told him what the demands were and he says, well, he says, well, he says, we'll see what we can do to go fishing, and he came along with us on one occasion when I went to see Calise with the contract.

Q. Was he a member of either Union then, if you know?

A. He told me that he wasn't.

Q. Now, do you recall what Union he joined?

A. Yes, he joined the ILWU Union. [299]

\* \* \* \* \*

Q. Now, did you ever see any representation that these [300] men had authorized either Union to represent them?

A. Yes. I saw authorization signed by—let's see. Nick Mudry, Vince Bulone, Frank Ferrara, and three men. The authorization to check off their dues and their Union dues, whatever it was.

Q. What if anything, did you do after that was exhibited to you, after it was shown to you after Mr. Columbic, Mr. Royal showed you this authorization? Did you enter into some agreement with them?

A. Well, we entered an agreement. I think it was the—I mean we went back and forth bickering about what percentage I should have gotten, you know, and



(Testimony of Mike Trama.)

what kind of arrangements there was to be made. We didn't come to an agreement right away, no.

Q. After you saw this authorization you subsequently did enter into a contract that is now before the Court?

A. Yes, we did.

Q. And you went fishing?

A. I think it was the following day after we signed the contract. I am pretty sure that it was.

Q. That was the first day that you delivered fish to Franco-Italian. Were there some men representing themselves to be pickets?

A. Yes, there were.

Q. Did you continue to deliver fish to Franco-Italian?  
[301]

A. We delivered to there, continuing fishing for about five nights or six nights I think it was. I don't know.

Q. What, if anything, happened after that five or six deliveries?

A. Well, as I remember, we resumed fishing again the following month. As we come in with the load with some fish, I wouldn't say a load, with some fish that we had some trouble unloading.

When I tried to get hold of the fleet manager, I told him what seems to be the trouble, and he said just wait a minute. We waited, and he told me to keep waiting awhile. The more I told him we got fish in the boat, they are going to spoil, I said we want to unload and he told me to wait until Joe gets here or wait until somebody gets here, and about that time it was about three or four o'clock in the afternoon.

We couldn't unload that fish into the cannery, and

(Testimony of Mike Trama.)

we had to bring it to a market because it got to a point where it would spoil more.

Q. When you took that fish to a market, were you paid for it?

A. No. We weren't paid at all. It wasn't in suitable condition to be packed or to do anything with it.

Q. Your boat doesn't have refrigeration on it, does it?

A. It does not, no. [302]

Q. Did anyone tell you why they wouldn't unload the fish?

A. He told me, he says, that if he would take my fish and put it in the plant, he was afraid that the cannery workers would walk out of the plant due to the fact that they had a letter from the Cannery Workers' Union that they were being claimed unfair by the AFL Union.

Q. Did you talk to any representatives of the Cannery Workers' Union?

A. Not that day, I didn't no, but I did later on.

Q. To whom did you speak?

A. Well, as I recall, I went to go back a little bit to where we talked to him. The very first day we came in we had trouble. We went in to see Mr. Tommy Ivey and Mr. Gomez.

Q. Now, this fish that you couldn't get delivered, did you have an order from the Cannery to bring that fish in?

A. Well, I thought I had an order for it, because I had a contract with them. I thought my order was good.

(Testimony of Mike Trama.)

Q. Did they think so after you got the fish there, meaning the cannery?

A. Would you repeat that question?

Q. Did the cannery believe that you had the right to bring that fish in when you got it there?

A. Well, at first I think they did, yes. [303]

Q. Did you bring in any fish thereafter?

A. Well, after we bring those fish we said—we waited awhile to see what we can do to get this mess straightened out, but maybe a week, I think we were going to try it again and the same procedure followed.

Q. At about this time, Mr. Trama, did the Unions settle their differences and the entire fleet go out?

A. I think they did, yes.

Q. Did the entire fleet fish on the—that is, did the entire fleet fish unmolested for the rest of the year?

A. Yes, they did.

Q. Did you?

A. No, we were tied up.

Q. In effect, you lost the rest of the season, did you not?

A. Yes, we did.

Q. Did you make any efforts to go out fishing during this period of time?

A. Yes. We went to see Mr. Margolis. We went to see John Royal. We went to see Tommy Ivey from the Cannery Workers' Union. Went to see the District Attorney. We were going from one place to another trying to get some kind of release, some kind of help. We even went to the NLRB.

Q. Did you accompany me to the NLRB in this building?

(Testimony of Mike Trama.)

A. Yes, we did, went together. [304]

Q. Did we have a conversation with—

A. Mr. Fisher.

Q. Do you recall what Mr. Fisher told you?

A. Yes, Mr. Fisher asked me whether the boat had made \$50,000 business for the year. I think it was \$100,000 business for the year, and I told him it was a new vessel, just had been launched in September. I told him previously I had the boat Fisherman in which it did not make \$100,000 business for the year.

Q. What did he tell you?

A. He turned down, as I recall, he turned down our application for it. He said we don't come under the jurisdiction or something like that.

Q. Did you consult with any legal counsel as to what you could do legally other than through the NLRB?

A. Yes. I consulted with Mr. Margolis, consulted you, Miller, another attorney.

Q. Did you also consult the Union Attorney, Mr. Di Macele?

A. Yes, I did.

Q. Now, I want to call your attention to this lawsuit in which Franco-Italian Packing Company, Seine & Line Fishermen's Union, John Calese, Nick Pecoraro, Pete Di Meglio and yourself and your father are named as defendants?

A. Yes, I recall.

Q. Now, prior to that action which was filed on October [305] 28th, did you ever notice that the crew members were considering filing such action? Before they filed it, did you know that it was going to be filed?

A. Yes, I knew.

(Testimony of Mike Trama.)

Q. Did you have occasion to talk to Mr. Royal or Mr. Columbic of Local 33 concerning that lawsuit?

A. Yes. As I understand it, they were going to sue the cannery and the Union, and everybody else included, but they never mentioned that I was going to be sued in it.

Q. Did they ask you to be a plaintiff in it?

A. Yes, Mr. Margolis did ask me in the way that he said if I got in the lawsuit, it would be a better lawsuit.

Q. What did you do?

A. I told him that I couldn't go ahead and get in it, in the lawsuit, and I said the only thing I wanted to get interested in is going fishing and not get involved in any lawsuits.

Q. Did you have any further conversation?

A. Yes, I had several conversations with Mr. Margolis and John Royal, and I told them that I was willing to pay an attorney fee, that was—that for them to try to give me fishing. I told them that I thought I had a valid contract with the ILWU and therefore they should try to do everything they could to make me go fishing and try to give me fishing. Nothing happened in that case, nothing at all. The only [306] thing they told me, they said we got to sue them. You got to get in the lawsuit.

Q. Did you ask them whether or not the lawsuit would get you fishing?

A. I asked them, and they didn't think so.

Q. After that did you have conversations with Mr. Calese as to whether or not he would make any objections to your going fishing?

A. I beg your pardon?

(Testimony of Mike Trama.)

Q. Did you ever have a conversation after that with Mr. Calese?

A. Well, I tried to see Nick first. I think through Nick I got to see John Calese.

Q. That is Nick Pecoraro.

A. Nick Pecoraro.

Q. Is he an employee of the Seine & Line Fishermen's Union? A. Yes, he is.

Q. What happened?

A. Well, I was trying to get to Nick and ask him what we would have to do in order to clear ourselves or have them release us in order for us to go fishing. I told him that the members had picketed ILWU, picketed as a bargaining agent. I said where does it put me? I said the only thing I can do is what the crew wants. I said that's why I signed a contract [307] with the ILWU, and they say that these men belong to the AFL.

Now, I don't know who to believe. I didn't know whether to believe the crew or believe the Unions or what to believe.

Q. Did you ask Mr. Calese anything about arbitrary measures arbitrating the matter?

A. Yes, I did. I said why don't we set an arbitration, call both parties and have the men pick out which Union they want, and you two Unions will come to an understanding. I guess one side was too proud to ask the other side to call in an arbitration or rather Calese wanted it. If Calese wanted it the other side didn't want it.

Q. Did you care at that time what Union these members, these men were members of?

A. No, I didn't care at all what Union they picked.

(Testimony of Mike Trama.)

Q. In one way or another did you ascertain from the Seine & Line Fishermen's Union what they thought these men would have to do for you to go fishing?

A. Well, they told me the men should come in since they are members, they said they will have to come in and be reinstated in the Union. That's what they told me, and they said, due to the fact that you guys went fishing when everybody else was tied up, he said that was some kind of penalty. What the penalty was, they gave me an idea, but they didn't [308] say how much.

Q. What were you to do with that information, if anything?

A. Well, I was to bring it back to the crew and told them what the Union, because what the Union wanted. In other words, he said bring it back to the guys and see what they want to do with it.

Q. And did you do that?

A. I just related what they told me to the crew, yes.

Q. Did you ever tell the crew what to do concerning those demands of the Union, of the AFL-CIO Union?

A. Well, yes, because they were asking me when we go fishing. They were just as concerned as I was. They wanted to know what was going on, and I would tell them.

Q. Did you ever tell them what you, Mike Trama, wanted them to do?

A. No, I didn't tell them what I wanted. It was whatever Calese demanded from us to go fishing.

Q. Did you subsequently take the boat out fishing; did you go out fishing again with the boat later in that year of 1957?

(Testimony of Mike Trama.)

A. Yes. We went fishing. When we had an order from the market. That is the way we could go fishing if the market bought some fish, because we couldn't go to the cannery.

Q. Later, Franco-Italian obtained a temporary injunction, didn't they? [309]

A. Yes, they did. [310]

\* \* \* \* \*

Q. Mr. Mudry has said that you last went out fishing for the market when he was on the boat, that you told him that you were speaking to him as a father and telling him what to do. Did you say that to him?

A. Well, I said something that since we can't, we can't come to an agreement or get, or we can't get a release and that you fellows don't want to do anything at all, I told him the best thing for us to do to seek some employment until we can straighten this mess out which I was one of them. I went to work for my brother.

Q. Did you ever tell him or the crew on that voyage that "I will fire you and tie up the boat"?

A. I said that we were forced to tie the boat up because we can't get any orders.

\* \* \* \* \*

Q. When did you decide that you would not rehire these men after January 1, 1958? [311]

A. Well, for one thing, as to that, they knew how hard I tried to get the boat released and some of the occasions Nick was with me. Maybe a couple of other times. They knew how hard I tried to go fishing and yet they put me as a party defendant on a lawsuit for about \$100,000. That kind of gave me an idea that



(Testimony of Mike Trama.)

these men couldn't be trusted, and furthermore, I started to lose confidence in them.

Q. Now, did they also discuss this matter in your presence, the \$100,000 lawsuit?

A. Yes, they wanted me to join in it. They were, they claimed I should have been in it, and suing everybody under the sun, I guess.

Q. What effect did it have on you when talking about it?

A. You mean this lawsuit? [312]

\* \* \* \* \*

Q. (By Mr. Miller): The question is: What effect did the conversations have on you physically?

Mr. Margolis: I object to that as immaterial.

Trial Examiner: I will overrule the objection. The conversation is about the lawsuit in your presence, what effect did it have on you?

The Witness: I get excited. Who wouldn't get excited?

Q. (By Mr. Miller): Did you ever ask them to stop doing that?

Trial Examiner: Doing what?

Q. (By Mr. Miller): Talking about the lawsuit?

A. Yes. I told them that if they were going to sue, to go ahead and sue but don't talk about it. I said, I got all excited, I mean they just—

Q. Let's go back to Mr. Affidi. Did you know Mr. Affidi was going to Algiers?

A. Well, he told me earlier in the year sometime, I don't recall when, but perhaps after the season or right along in there, he was going to go back to Algiers.

(Testimony of Mike Trama.)

His reasons, he never gave them to me. But I knew about it.

Q. Prior to his leaving for Algiers, did you ever tell him he was fired? A. No, sir. [313]

\* \* \* \* \*

A. I told them about a week before the season ended. I told the boys, I said, "I think you fellows had better look for a job after the sardine season which" I said, "ends December 31st. I think you had better look for employment at the end of the year."

Q. Now, Mr. Affidi wasn't on the boat at that time nor Mr. Mudry, were they?

A. No, they weren't.

Q. Did you have other men replacing them?

A. Yes, I did.

Q. Were those men members of the crew in 1958?

A. Yes, they remained for about—one man remained for all year and one for three or four months, and then he quit and went south.

Q. Now, at this time Mr. Trama, do you care which Union these men are members of?

A. No, I don't.

Q. Is there any financial advantage to you whether they are members of one Union or the other?

A. No financial at all. I mean the boat only gets so much [315] regardless. They go one Union or the other.

A. The dues are the same.

Q. One half of one percent deducted of the crew earnings for social welfare?

A. Yes, it is about the same thing. I mean it would

(Testimony of Mike Trama.)

be within a dollar or two difference. I mean it doesn't amount to anything hardly.

\* \* \* \* \*

Q. What I am asking you, did you ever tell them that if you don't drop the lawsuit against the Seine & Line Fishermen's Union, I will fire you?

A. No, I don't think I ever said that.

Q. Now, subsequently, Mr. Trama, these same men with Mr. Margolis as their attorney sued you in Long Beach, did they not?

A. This was a lawsuit in Long Beach; which one are you referring to? [316]

Q. I am talking about the one for wages in helping you out with the boat?

A. Yes, sir, there was a lawsuit there, yes.

Mr. Miller: I don't think I have anything further.

Trial Examiner: Any questions?

Mr. MacKenzie: May I have a minute?

Trial Examiner: Off the record.

(Off the record discussion)

Trial Examiner: On the record.

Mr. MacKenzie: I will defer to Mr. Margolis at the moment.

Trial Examiner: All right.

#### Cross-Examination

Q. (By Mr. Margolis): Mr. Trama, I am showing you General Counsel's Exhibit 7 which is the agreement that you signed with Local 33 on September 27th, 1957. Do you recognize that document?

A. Yes.

(Testimony of Mike Trama.)

Q. I call your attention to this clause. [317]

\* \* \* \* \*

Q. During the period of time that you fished, well, during the month of September, let's say, you did some fishing and then you made an account. Did you make deductions of \$2.00 a month per man and one-half of one percent of the net?

A. May I ask you which September?

Q. 1957 I am talking about.

A. Yes, I did. [318]

\* \* \* \* \*

Q. Now it is also a fact, isn't it, that the AFL charges \$1.00 a month and not \$2.00 a month?

A. Yes.

Q. Now, I show you your settlement sheets and show you that in February of 1958 the dues that you deducted in the first place were \$1.00 a month and not \$2.00 a month. How did you decide that you were going to deduct \$1.00 a month and not \$2.00 a month in 1958 if you didn't know what Union you were deducting dues for?

A. Well, as you can see, Mr. Margolis, the figures are very small, such as \$98 for a month. I thought we'd just take \$1.00 out, not knowing which Union we were going to give that money to yet. [319]

\* \* \* \* \*

Q. You testified that it is not customary to tell men at the end of the season in writing to come back to work the next season. They just come back, is that right?

A. I mean if either party don't say anything, they just come [324] back.

(Testimony of Mike Trama.)

Q. Is it customary to write also to men at the end of the season telling them that they are fired?

\* \* \* \* \*

The Witness: Well, it isn't customary but I mean if you are going to tell a guy if your word is no good, no more, you have to put it in writing, I mean they can say well you said it may be. You said it, so we had to put it in writing. [325]

\* \* \* \* \*

Q. Now, let's go to the question of my discussions with you, Mr. Trama. We had two or three discussions, did we not?           A. Yes, we did.

Q. These took place, did they not, all took place at Local 33's hall in San Pedro?

A. Yes, that is right.

Q. And you asked to talk to me, did you not, the first time at least? I don't know about the second.

A. I think about the first time I asked to talk to you, yes.

Q. You asked to talk to me. There were present at the time that you talked to me John Royal and Mel Columbic and some other crew members?

A. There could have been, yes.

Q. I remember that you said to me what can I do about going fishing. You know that they are stopping me from going fishing. What am I going to do. Is that right?

A. Yes. As a lawyer for the union I felt that you should have known what I should have done.

Q. Do you remember that I told you that I was afraid that the Labor Board would not take jurisdiction of your case [327] at this time under the standards

(Testimony of Mike Trama.)

that they had certain rules which would stop the Labor Board from taking your case at that time; do you remember me telling you that?

A. I don't recall, Mr. Margolis.

Q. Do you remember me saying that there was another section of the law where you could sue for damages and that the Court would hear that case. Do you remember me telling you that, that you could sue for damages? A. Yes.

Q. Do you remember my saying that the reason you could sue for damages was because there was a secondary boycott?

A. Yes, I remember that.

Q. Do you remember me telling you that I thought you had a cinch case?

A. You could have said that, yes.

Q. And you asked me, do you remember, you were asking me whether you filed that suit that I could guarantee that you could go fishing or something like that, whether I would assure you that you could go fishing or guarantee that you would go fishing if you filed the suit?

A. I think I asked you, Mr. Margolis, if you could—any possible way that you could get us fishing without a lawsuit, and you said no.

Q. That is right.

A. May I finish, please? [328]

Q. Sure, go ahead.

A. I think you told me that the only way is to go to Civil Court and for you to join the suit and go to trial to get an injunction. That is what you told me.

Q. Are you sure we were trying to get—

(Testimony of Mike Trama.)

A. Possibly you said we would obtain an injunction.

Q. Do you remember me telling you that you had a very strong case for damages?

A. You could have said that, yes.

Q. Do you remember my telling you that if you filed a lawsuit for damages you could collect and if they still let you go fishing you could collect for what you lost because they wouldn't let you go fishing?

A. I think you said that, yes.

Q. Didn't I tell you that if you filed this kind of a lawsuit that I thought that the attorneys on the other side would be crazy to let the secondary boycott go on, and I thought they would probably stop it if you filed the lawsuit, but that I couldn't guarantee that they would?

A. I think you put it in somewhere along those lines, I mean, I don't know whether that was the exact words or not.

Q. Of course, but I said that is the idea?

A. Yes.

Q. Do you remember at first you said well that you thought that was a good idea and you thought you would go along with [329] such a lawsuit?

A. I might have said that, yes.

Q. And then later on you told me that you had talked to your own attorney and that you had changed your mind?

A. Yes. I said that I had changed my mind and the reason—may I explain it at this point, what my reasons were?

Q. Yes, surely.

(Testimony of Mike Trama.)

A. I thought that if I would go ahead and sue the cannery and that I would get involved in a lawsuit my chances were too great for me not ever to get an order for marketing fish or anything like that. I didn't want to get involved in suing the cannery because I would just have to sell my boat and go somewhere else and start all over again. That is the reason I—

Q. Do you remember that I told you at that time that your suit could be just against the cannery workers Union and the fishermen's union for the secondary boycott, but that you didn't have to sue the cannery?

A. I don't recall that. I think you said we have to sue everybody who was involved in there.

Q. You don't remember my saying that you could sue just the two unions that were stopping you from going fishing?

A. I don't recall, Mr. Margolis, that way.

Q. Do you remember my saying to you—you kept saying wouldn't the union let me out of my contract; you kept [330] saying to the union officials wouldn't you let me out of my contract with you?

A. I don't know what you mean by that, Mr. Margolis.

Q. Well, didn't you say to the union officials and to me as long as you can't protect me from going fishing, you should let me free from my contract. You should let my contract go?

A. Well, I said if there were any other means for me to get fishing, I said would I—I said would you let me go fishing even though you have to give up the contract. I might have said.

Q. Yes, something like that.

A. Yes.



(Testimony of Mike Trama.)

Q. Do you remember that I said that the union's position was that the law was being violated, that there were illegal acts being committed and that the union was not going to give way to those illegal acts but that it was going to fight and it was up to you to stand up and fight against these illegal acts. Do you remember my saying something like that?

A. I don't think you put it such as you are putting it now, Mr. Margolis.

Q. Well, do you remember my saying that the union wasn't going to let these people get away from that and just turn the contract over to somebody else? [331]

A. Well, you told me that you wouldn't give up the contract, I remember that.

Q. Well, do you remember my saying that the union position was not to let them get away with breaking the law as they were doing?

A. You told me they were breaking the law, whatever was involved, I don't know.

Q. Do you remember my saying to you that if you stand up and fight on this, you have got the law on your side and you and the crew can get what you got coming to you and that the other side is going to have to give up on this case; you got such a strong legal case?

A. I think if I recall, Mr. Margolis, I also told you my kids cannot eat and my bills can't get paid on a lawsuit. I had to go fishing and I also said that these men here can't wait until the lawsuit is pending or before we collect, before we pay our bills, and it seems like with your so-called contract we couldn't go fishing.

(Testimony of Mike Trama.)

Q. Do you remember, Mr. Trama, my saying to you during that period of time that if you filed such a lawsuit, and you became a party to it, that I thought that it was very probable that the secondary boycott would be ended while I can't guarantee it.

A. You couldn't guarantee it. That would mean—

Q. But you remember me saying that? [332]

\* \* \* \* \*

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GENERAL COUNSEL'S EXHIBIT 2

United States of America  
Before the National Labor Relations Board  
Twenty-first Region

Case No. 21-CA-2904

MIKE TRAMA (F/V SANDY BOY)  
and  
FISHERMEN'S UNION, LOCAL 33, ILWU

STIPULATION

It is Hereby Stipulated and Agreed by and between Mike Trama (F/V Sandy Boy), Fishermen's Union Local 33, ILWU, and the General Counsel of the National Labor Relations Board, by their respective counsel, that if Mr. Earl W. Deharak were called to testify, he would testify under oath that he is Office Manager and Comptroller of Franco-Italian Packing Co., hereinafter called Franco-Italian; that he is in charge of the books and records of Franco-Italian; and that based on an examination of said books and records, and to his personal knowledge, Franco-Italian during the calendar year 1958 shipped products in excess of \$50,000 in value directly to points outside the State of California.

/s/ HOWARD E. MILLER  
Attorney for Mike Trama

BEN MARGOLIS,  
Margolis, McTernan and Branton, by  
Ben Margolis, Attorneys for Fishermen's  
Union, Local 33, ILWU

/s/ SHERWIN C. MacKENZIE, JR.  
Counsel for General Counsel, National  
Labor Relations Board

Dated at .....

California this ..... day of April, 1959.

Admitted in Evidence April 13, 1959.

## GENERAL COUNSEL'S EXHIBIT 9-A

## NOTICE

To: Vincenzo Bulone  
1226 — 18th Street  
San Pedro, California

This is to advise you that under the terms of your employment by the Boat Sandy Boy, you were hired for the sardine fishing season of 1957, which concluded December 31, 1957. The undersigned does not desire to employ you further for the period commencing January 1, 1958.

As orally requested a few days ago when you were notified of this decision on the part of the undersigned, you are requested to forthwith remove your belongings from the Boat Sandy Boy.

Dated: January 2, 1958.

BOAT SANDY BOY  
/s/ By MIKE TRAMA  
Mike Trama

Admitted in Evidence April 13, 1959.

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GENERAL COUNSEL'S EXHIBIT 9-B

NOTICE

To: Nick Mudry  
4748 Albaury Street  
Lakewood, California

This is to confirm the status of your employment by the undersigned as the operator of the Boat Sandy Boy.

You were hired for the sardine fishing season of 1957 which came to a close December 31, 1957.

On or about December 15, 1957 when the Boat Sandy Boy resumed fishing, you advised the undersigned you had employment elsewhere and you would no longer honor your contract with the Boat Sandy Boy, fulfilling the responsibility of the terms of your employment. In accordance with your desire, the undersigned accepted your resignation as an employee of the Boat Sandy Boy.

This is to advise you that, based upon your voluntary departure from the employ of the Boat Sandy Boy and the terms of your employment which of itself terminated December 31, 1957, your services are no longer required by the undersigned.

Dated: January 2, 1958.

BOAT SANDY BOY

/s/ By MIKE TRAMA

Mike Trama

Admitted in Evidence April 13, 1959.

## GENERAL COUNSEL'S EXHIBIT 9-C

## NOTICE

To: Frank Ferrara  
823 W. 18th Street  
San Pedro, California

This is to advise you that under the terms of your employment by the Boat Sandy Boy, you were hired for the sardine fishing season of 1957, which concluded December 31, 1957. The undersigned does not desire to employ you further for the period commencing January 1, 1958.

As orally requested a few days ago when you were notified of this decision on the part of the undersigned, you are requested to forthwith remove your belongings from the Boat Sandy Boy.

Dated: January 2, 1958.

BOAT SANDY BOY

/s/ By MIKE TRAMA

Mike Trama

Admitted in Evidence April 13, 1959.

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GENERAL COUNSEL'S EXHIBIT 9-D

NOTICE

To: Sal Lucca  
384½ W. 12th Street  
San Pedro, California

This is to advise you that under the terms of your employment by the Boat Sandy Boy, you were hired for the sardine fishing season of 1957, which concluded December 31, 1957. The undersigned does not desire to employ you further for the period commencing January 1, 1958.

As orally requested a few days ago when you were notified of this decision on the part of the undersigned, you are requested to forthwith remove your belongings from the boat Sandy Boy.

Dated: January 2, 1958.

BOAT SANDY BOY,  
/s/ By MIKE TRAMA  
Mike Trama

Admitted in Evidence April 13, 1959.

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[Endorsed]: No. 17041. United States Court of Appeals for the Ninth Circuit. National Labor Relation Board, Petitioner, vs. Mike Trama, Respondent, Transcript of Record. Petition for Enforcement of an Order of the National Labor Relations Board.

Filed: September 21, 1960.

/s/ FRANK H. SCHMID,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.





ent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Respondent's counsel.

(3) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the proceeding before the Board upon which the said Order was entered, which transcript includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the Order of the Board sought to be enforced.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceeding set forth in the transcript and upon the Order made thereupon a decree enforcing in whole said order of the Board, and requiring Respondent, his agents, successors, and assigns, to comply therewith.

/s/ MARCEL MALLET-PREVOST,  
Assistant General Counsel  
National Labor Relations Board

Dated at Washington, D. C. this 8th day of August, 1960.

[Endorsed]: Filed Aug. 10, 1960. Frank H. Schmid, Clerk.

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[Title of Court of Appeals and Cause]

ANSWER OF RESPONDENT TO PETITION FOR  
ENFORCEMENT OF AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD,  
AND CROSS-PETITION FOR REVIEW OF  
SAID ORDER

To the Honorable, the Judges of the United States  
Court of Appeals for the Ninth Circuit:

Comes now Mike Trama, Respondent in the above entitled proceeding, and pursuant to the National Labor Relations Act as amended (61 Stat. 136, 29 U.S.C., 151 et seq., as amended by 73 Stat. 519), hereinafter called "the Act", and Rule 34 of the Rules of this Honorable Court, hereby files his answer to that certain Petition for Enforcement for an Order of the National Labor Relations Board dated August 8, 1960, and his Cross-Petition for Review of said Order issued by the National Labor Relations Board on November 17, 1959. In support of his Answer and Cross-Petition for Review, this Respondent respectfully shows as follows:

(1) This Respondent denies the allegations contained in Paragraph 1 in its entirety, save and except that Respondent admits his activities of a business nature occurred in the State of California and within this Judicial Circuit and admits this Court has jurisdiction of the Petition referred to herein.

(2) Respondent admits the allegations contained in Paragraph 2 of said Petition for Enforcement, except insofar as it is alleged that the proceedings before the Board were "duly . . . had; and that the Boards findings of fact, conclusions of law, and Order were "duly stated

. . . and issued", and as to such excepted allegations, the same are denied by this Respondent.

(3) This Honorable Court has jurisdiction to entertain this Respondent's Cross-Petition for Review and to set aside the Order of the Board as prayed for herein by virtue of Sections 10(F) and 10 (E) of the National Labor Relations Act as amended [29 U.S.C. 160(F) and 160(E)].

(4) This Respondent alleges that the decision and Order of the Board herein is based wholly upon the findings, conclusions and recommendations of the Trial Examiner, as modified therein, which the Board adopted as its own, and that said findings and conclusions as adopted by the Board are not supported by reliable, probative and substantiating evidence, considering the record as a whole, but rather, are wholly based upon unwarranted inferences, assumptions and conjectures, unfounded suspicions, conclusions and surmises, and uncorroborated hearsay, and from incompetent and inadmissible evidence, contrary to Sections 10(B), 10(E) and 10(F) of the National Labor Relations Act as amended and the standard or proof imposed upon the Board by said Act and by Section 7(C) of the Administrative Procedure Act, as interpreted by applicable decisions of the Supreme Court of the United States and of the Honorable Court of Appeals for the Ninth Circuit.

(5) This Respondent further alleges that in review of the lack of jurisdiction, of other action of Board involving this Respondent, and of substantial evidence before the Board that Respondent caused or attempted to cause prohibited discrimination against, or engaged in restraint or coercion of any employee, including the

charging parties, within the meaning of the Act, the "remedial" provisions of the Board's Order in this case and, more particularly, the provisions for notification, back pay, and posting of notices, are arbitrary, without legal or equitable justification, and contrary to the provisions of the Act and, therefore, should not be enforced by this Honorable Court.

(6) This Respondent further calls to the attention of this Court and alleges that in November of 1957 the Board, through its agent Leo Fischer in Los Angeles, California, refused to accept a Petition for Certification by Respondent herein upon the basis Respondent's volume of business did not meet the jurisdictional limits of the Board, that on March 21, 1958, in NLRB Case No. 21RM471, the Board again refused jurisdiction of Respondent for lack of dollar volume business to meet the jurisdictional standards and, as late as July 15, 1960, in NLRB Case No. 21RC623, the Board again refused to take jurisdiction of Respondent for lack of dollar volume, and in view of the action of the Board in the aforementioned matters, Respondent alleges that enforcement of the Board's Order herein, requiring the payment of back pay to the charging parties, would be inequitable and not legally justified under the Act.

Wherefore, based upon the above stated ground, this Respondent prays this Honorable Court that it cause Notices of the filing of this Answer and Cross-Petition for Review to be served upon the Petitioner, National Labor Relations Board, and that this Court exercise its jurisdiction in the premises to review the pleadings, testimony and evidence, and the Boards decision and Orders, not only as set forth in the certified transcript of the entire record which the Board has stated it is filing herein, but also in all other matters wherein the Board has

refused to accept Petitions involving this Respondent and, thereafter, enter its Decree denying the Petition to Enforce the Board's Order with respect to this Respondent, his agents, successors and assigns, and set aside, vacating and annulling the whole of said Order to the Board dated November 17, 1959.

Dated this 29th day of August, 1960.

Respectfully submitted,

HOWARD E. MILLER,  
Attorney for Respondent Mike Trama

Affidavit of Service by Mail Attached.

[Endorsed]: Filed Aug. 30, 1960. Frank H. Schmid,  
Clerk.

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[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS RELIED UPON BY  
THE BOARD AND DESIGNATION OF PARTS  
OF THE RECORD NECESSARY FOR THE  
CONSIDERATION THEREOF

To the Honorable, the Judges of the United States  
Court of Appeals for the Ninth Circuit:

Comes now the National Labor Relations Board, petitioner herein, and pursuant to Rule 17 (6) of the rules of this Court, files this statement of points upon which it intends to rely in the above-entitled proceeding, and this designation of parts of the record necessary for the consideration thereof:

## I.

## Statement of Points.

A. The Board's decision to assert jurisdiction in this case was a sound exercise of its discretion.

B. Substantial evidence on the record as a whole supports the Board's finding that respondent interfered with, restrained or coerced his employees in violation of Section 8 (a) (1) of the Act.

C. Substantial evidence on the record as a whole supports the Board's finding that respondent, in violation of Section 8 (a) (3) and (1), discharged his crew because they refused to get reinstated in Seine & Line Fishermen's Union of San Pedro.

\* \* \* \* \*

/s/ MARCEL MALLET-PREVOST,  
Assistant General Counsel  
National Labor Relations Board

Dated at Washington, D. C. this 15th day of Sept., 1960.

[Endorsed]: Filed Sept. 17, 1960. Frank H. Schmid,  
Clerk.

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